

**The Brookline Select Board
Committee on Policing Reforms**

Final Report

Final Report Adopted on X, XX, 2021

FOREWORD

This report of the Select Board's Committee on Policing Reforms (the "Reforms Committee") is written for the residents of the Town of Brookline, to describe in some detail what our **very good, but not perfect** Brookline Police Department ("BPD") does for the community beyond being *Cops on the Beat* and to propose important reforms that will result in a more perfect police department and community. This report is only the most recent iteration of the Town of Brookline's ongoing efforts to improve policing to better serve the community¹ and, if adopted, the recommendations in this report will not only result in immediate benefits but will create changes to the structure of policing in Brookline that will have long lasting benefits.

I.

Several factors converged to produce the Reforms Committee and a parallel Task Force to Reimagine Policing (the "Task Force"). These factors include the reports and cell phone images of the killing of Black men and women in police custody in communities across the country and the outrage and trauma those deaths cause to people of color and others, particularly youth, in Brookline. The report of the Reform Committee is not written to rehash those incidents or to delve into the sometimes sordid history of policing in America. The purpose of this report is improving the BPD.

Police at all times and in all societies are a tool of the community in which they work to enforce the laws, including constitutional provisions, whether just or unjust, and maintain public order so that the community can function as the community and its political leadership wants it to function. Where the social order is oppressive, policing is oppressive. Police have been used in America for many unjust purposes: to enforce the Fugitive Slave Act, to control and bust unions, to intimidate and commit violence against civil rights or anti-war demonstrators, to harass and round-up undocumented immigrants, to harass and loot Black and poor communities as an easy source of municipal revenue, to enforce political correctness and racial supremacy, and to use the "paddy wagon" to control and lockup ethnic communities uneasily acculturating to America. Across the globe it is often worse.

¹ Earlier reports include the 1987 "Report of the Selectmen's Subcommittee on Police and Community Relations" (Jeffrey Allen and Martin Rosenthal), the 1998 Community Relations Study (prepared by the BPD), and the 2009 Citizen Complaint Review Committee. The 1987 report discusses at length the BPD-community relationship, including public input on BPD policies. The 1987 and 1998 reports are included in Appendix A.

Police also fight crime. Crime in communities of color and poor White communities especially is traumatizing and debilitating. It is often in those vulnerable communities that policing is most problematic. But policing also has problems in communities like Brookline. Brookline has, however, worked hard as a community to reduce those problems. This is a reflection of the generally socially progressive orientation of the residents of Brookline who demand good policing that emphasizes fairness and equity. They acknowledge, appreciate, and support the overall work and professionalism of the Brookline Police Department and rightfully want continuing diligence and reforms.

II.

This report looks at policing in Brookline through many lenses.

First, the traditional public safety role of policing and the many ways in which traditional policing can create friction and ill-will in the people who come in contact with the police. In Brookline, this is often when people encounter the police during traffic stops, particularly when the driver of the vehicle is a person of color traveling through Brookline from other areas. Subcommittees of the Reform Committee looked at the traditional public safety function in terms of the disparities in the treatment of people of color and others that may be based on implicit or explicit racial, income, or other biases or based on non-bias causes. Recommendations of the Accountability, Civil Rights, Militarization, and Mass Events, and the Personnel Subcommittees have recommendations that directly or indirectly are intended to mitigate biases and other causes of disparate treatment.

We are also mindful of the need for prudence in the use of Town resources and of recent proposals in Town Meeting to make major cuts to the BPD budget. We have not been able to identify any major cuts that would be prudent with respect to the needs of public safety and the goals of the Town to increase diversity in the BPD. Proposed cuts would have to come from the largest component of the BPD budget: personnel. This would have a devastating impact on racial and gender diversity that the BPD has been struggling to increase in recent years, overcoming the many obstacles placed in their way by Civil Service rules and preferences. These obstacles are discussed in the Personnel and Governance Subcommittee report. Such cuts will reduce the availability of officers on patrol 24 hours of every day, which will reduce the ability to provide many services that don't arise only during business hours such as mental health or substance use crises. These 24/7 services are discussed in the Mental Health and Substance Use Disorders Subcommittee.

In addition, as explained in the Personnel and Governance Subcommittee report, we also have a serious retention problem that may require significant increases to the BPD budget to address. In general, although comparisons are not exact, Brookline's pay scale is seen as lagging behind other departments such as Newton, Boston, the State Police, and others. Not only do we lose officers we've trained and who have become knowledgeable about Brookline and its ethos, but many of them are more diverse, in ethnicity and gender. The Personnel report also raises the issue of Civil Service and how it challenges BPD's crucial and longstanding efforts to recruit and promote diversity.

Second is the non-traditional roles that the BPD and police elsewhere have been given. These non-traditional roles result from the legitimate intersection of policing and other Town functions such as the schools, housing, and human services. They also result from the failures of federal, state, and local governments to adequately fund the social safety net and other services that people need to be able to be happy law-abiding and contributing members of society. The Reform Committee acknowledges that there will be no silver bullet that can quickly correct the failures of the broader society and provide the social service supports that can reduce the role that the BPD must play as 24 hour, 7 days a week guardians of public safety and welfare. But, the investments the Town has made and will continue to make in intensive and extensive training of BPD officers—and those officers' enthusiastic response to that training—is the best protection against the horror stories seen on 24 hour cable channels that have caused some to want to remove police involvement from these difficult and potentially dangerous calls.

Third, is the position of the BPD in the chain of command of Town governance from the voters to Town Meeting and the Select Board (the Town's police commissioners), and finally to the BPD. This report recognizes that there are weak links in that chain that the Reforms Committee's recommendations must repair. That repairing will enable Town Meeting and the voters to have a clearer understanding of policing and the steps that are required to create the more perfect police department that we all desire. That repair will also enable the Select Board, with all the work placed on its volunteer shoulders, to exercise fully its police commissioner role in oversight of the BPD.

III.

The task of the Reforms Committee has been to identify and propose (i) improvements in the internal operations of the BPD, (ii) improvements to the surrounding social service and other Town environments in which the BPD operates, (iii) structures that will help the Select Board as the Town's police commissioners to more effectively oversee the BPD and enable it to be effective in their traditional and non-traditional roles, and (iv)

educational initiatives that will help Town residents recognize what the BPD does in the community and its value to all residents and visitors. Implementing the recommendations of the Reforms Committee in this report will go a long way towards meeting those goals.

There are numerous issues needing further consideration, some of which will be taken up by the short term continuation of the work of the Committee and others that can be referred to the proposed Police Commissioners Advisory Committee.

INTRODUCTION

This Committee and a parallel Task Force to Reimagine Policing grew out of the period of intense ferment in the country around recurring police misconduct against people of color in cities across the nation.² This ferment reached a crescendo on May 26, 2020 when a Minneapolis police officer kneeled on the neck of George Floyd, a Black man, for nearly ten minutes, killing him. That incident and numerous others before and after it precipitated a reckoning on racial injustice in the United States. A result has been many local, state, and federal legislative proposals to address policing and police misconduct. In Massachusetts legislation to reform policing was signed by Governor Baker on December 31, 2020: “An Act Relative to Justice, Equity, and Accountability in Law Enforcement in the Commonwealth,” Chapter. 253 of the Acts of 2020 (the “Police Reform Law”)

In July 2020, the Brookline Select Board established two committees to study and make recommendations on policing. They were the **Select Board’s Task Force to Reimagine Policing (the “Task Force”)**, which is chaired by Select Board member Raul Fernandez, and the **Select Board’s Committee on Policing Reforms (the “Reforms Committee” or the “Committee”)**, which is chaired by Select Board Chair Bernard Greene.

The Reforms Committee held its organizational meeting on August 19, 2020. The Charge for the Committee, which is included in Appendix A, stated the context for its establishment as follows:

The sadistic killing of George Floyd in Minneapolis and the re-playing of videos of the 8 minutes and 46 seconds that Officer Chauvin pressed his knee on Floyd’s throat has caused extreme trauma to the nation. The killing has provoked marches, organizing, and anger across America and the world and in Brookline. It has also triggered penetrating questions of policing across the country.

² Such severe misconduct does not represent the vast majority of police encounters with people of color, which occur without incident. Nonetheless, these exceptional incidents demonstrate the extraordinary importance of good policing and often point to areas where good departments, such as the BPD, can be made better. The BPD, unlike departments in the surrounding communities of Boston, Cambridge, and Newton, has had almost no high-profile “false arrest” or “excessive force” allegations, and none that resulted in serious injuries.

*A re-imagining policing task force has been established by the Select Board to consider bold changes to the policing model in Brookline. Separate from whatever bold changes are ultimately made in Brookline, the Select Board intends to use this opportunity to establish a **Select Board Committee on Policing Reforms** . . . to identify for recommendation to the Select Board any immediate improvements to the policies and practices of the Brookline Police Department. The Committee will also investigate the belief by some residents that the police department treats Black and Hispanic youth and Black and Hispanic individuals driving within or through the Town in a discriminatory manner. The Committee will not prejudge the Brookline Police Department's practices but it will review those practices. The Committee will also acknowledge in its work the reality that incidents of police violence against young Black men and others by police in multiple communities in the country that are captured on cell phone videos have traumatized people of color, particularly Black youth, and cast a negative light on all police officers, including Brookline officers.*

The first initiative of the Reform Committee was to formulate a chokehold ban for presentation to the Select Board.³ The Committee discussed the ban at its September meetings and received input from then Police Chief Andrew Lipson and the Brookline police union president, Michael Keaveney, who is a non-voting member of the Committee. The chokehold ban was voted and approved by the Reforms Committee at its meeting on September 16, 2020 and the Select Board held a public hearing and voted approval at its meeting on September 23, 2020. The ban was issued as a Special Order (No. 2020-18), dated October 8, 2020, of the BPD. Special Order No. 2020-18 is included in Appendix A.

Subsequent to the adoption of the chokehold ban, Governor Baker signed into law the Police Reform Law, which included a chokehold ban that allowed no extenuating circumstances.⁴ The Brookline ban contemplated circumstances where the officer or another person is at risk of imminent death or serious bodily injury. The Police Reform

³ The chokehold ban originated with appeals to the Select Board by Brookline residents in the spring of 2020 to establish a robust "use of force" policy for the BPD. Frequently cited as an example of the minimum that residents thought a use of force policy should include was the "#eightcantwait" proposals of the Campaign Zero project. The Chair of the Select Board reviewed the #eightcantwait policy proposals, reviewed the use of force policy of the BPD (General Order No.30.3), and discussed various related issues with the police chief. The Chair determined that the Brookline policy far exceeded the minimal demands of the #eightcantwait proposal, with one exception. The BPD policy did not explicitly ban chokeholds. Then Chief Andrew Lipson noted that in Massachusetts police are not trained to use chokeholds or related techniques.

⁴ "A law enforcement officer shall not use a chokehold." See Section 14(c) of new Chapter 6E, inserted into the General laws by Section 30 of the Police Reform Law.

Law provision on chokeholds is effective July 1, 2021 at which time the Brookline ban will be superseded.

On September 30, 2020, the Reforms Committee and the Task Force held a joint hearing to gather ideas that would inform our work going forward. Many comments were received from all perspectives on policing reform or reimagining. The transcript is found in the Appendix A.

With the enactment of the Police Reform Law the landscape of police reform shifted on December 31, 2020. Portions of the Police Reform Law will take effect in normal course after ninety days; and some portions will take effect on July 1, September 1 and December 1, 2021. Some provisions of the 2020 Act will require promulgation of rules and regulations in the Code of Massachusetts Regulations (CMR) by various state agencies, whether new or existing. The Police Reform Law also authorizes studies and commissions to consider additional legislation in the future. The Subcommittees incorporated relevant portions of the Police Reform Law into their reports, to the extent possible.

All of the materials, including minutes and meeting packets, resulting from meetings of the Committee and its Subcommittees can be found on the Reforms Committee's webpage at <https://brooklinema.gov/1804/Select-Boards-Committee-on-Policing-Refo>. The Webpage also includes multiple fact sheets on aspects of policing in Brookline that are often mis-understood and video presentations by BPD officers explaining their work and their feelings and thoughts about that work.

The Reforms Committee organized itself into five Subcommittees.

Accountability. Michael Zoorob (Chair), Ronald Wilkinson, Marty Rosenthal, Raj Dhanda, Jonathan Mande (left the Committee for family reasons in January of 2021), Robert Sable, Dwaigh Tyndal, and Bernard Greene.

Civil Rights, Militarization, and Mass Events. Paul Yee (Chair), Casey Hatchett, and Bernard Greene.

Community Outreach, Youth, and Non-Traditional Roles. Casey Hatchett (Chair), Michael Zoorob, Bernard Greene, Janice Kahn (non-voting consulting member), and Lt. Jenn Paster, Sgt. Chris Malin, and BPD social worker Anabel Lane (non-member consulting experts).

Mental Health and Substance Misuse. Elizabeth Childs (Chair), Casey Hatchett, Bernard Greene, Janice Kahn (non-voting consulting member), June Binney (resigned as member of Committee but continued working with the Committee as a non-voting

member and expert consultant), and Richard Sheola, Lt. Jenn Paster, Sgt. Chris Malin, and BPD social worker Annabel Lane (non-member consulting experts).

Personnel. Elizabeth Childs (Chair), Paul Yee, and Bernard Greene. Assistant Town Counsel Michael Downey and Director of Human Resources Department Ann Braga (non-member consulting experts).

In addition, throughout the time of the Committee's work, former Brookline Police Chief Daniel O'Leary provided invaluable expert consulting services to the Committee and all of the subcommittees and to the Task Force. Other Town staff that provided invaluable assistance to the Committee are mentioned in the Committee reports and in the Acknowledgements.

Each Subcommittee addressed specific issues with the goal of improving the delivery of services provided by the BPD in their traditional policing functions and in the non-traditional roles and responsibilities they have been asked to take on for a variety of reasons. The Subcommittees have also identified some functions performed by the police that can safely and effectively be transferred to non-police bodies.

One of the most significant proposals of a Subcommittee is the PCAC, which will strengthen the Select Board's role as police commissioners and will be a community forum to engage with the Select Board on policing issues. The PCAC along with a new Diversity Liaison will increase the community's knowledge of the Select Board's role as police commissioners, which is a Brookline specific and powerful form of civilian review of police.

The work of the Reform Committee will not be over with the submission of this Report. The Committee will continue to complete important tasks that it has undertaken, as described in the reports of the Subcommittees. It will also be guided by the words of the 1987 "Report of the Selectmen's Subcommittee on Police and Community Relations:"

It must be emphasized that this report should be viewed as the beginning, not the end, of a process of Selectmen involvement in these issues. Not only do some of our recommendations require further study, but all of them require ongoing attention and review -- as well as implementation measures and institutions. Moreover, the broad, underlying issues require constant and perpetual vigilance.

EXECUTIVE SUMMARY OF SUBCOMMITTEES' RECOMMENDATIONS

UNIVERSAL RECOMMENDATIONS

A key understanding that has emerged from Subcommittee discussions is that the concept of “public safety” in Brookline may need to be broadened from Fire and Police to include Health and Human Services. The current pandemic has brought this interconnection to the forefront. A specific near-term recommendation is to consider reorganizing the Town’s budget book, The Financial Plan. The Financial Plan would include Health and Human Services organizationally under Public Safety, which other communities, such as Somerville, have already done. More than an organizational change in a book, however, this would be a philosophical shift that represents a rethinking about the nature of public safety itself.

The Accountability Subcommittee’s recommendation of a Police Commissioner Advisory Committee resonates with the work of multiple Subcommittees who will not need to repeat the Accountability Subcommittee’s recommendation that the PCAC be implemented by the Select Board. To enable the PCAC to be up and running when major provisions of the Police Reform Law become effective on July 1, 2021, the Subcommittees urge the Select Board to establish the PCAC quickly so that it can begin its work before that time.

Subcommittees are also making recommendations that will have budgetary impacts on the Department of Public Health and Human Services and the Office of Diversity, Inclusion, and Community Relations. The Reform Committee believes that these recommendations can be incorporated into these departments in a cost effective manner by adjustments to the internal structures of the departments and being provided with additional staff to perform the tasks requested.

The Reform Committee requests that the Town Administrator prepare preliminary cost estimates for the additional services that are proposed to be provided through those departments.

ACCOUNTABILITY.

The goal of the Accountability Subcommittee is to identify reforms that would promote equitable policing and fairly prevent and correct misconduct. To accomplish that goal, we examined the civilian complaint policy and devised major improvements to the policy and the procedures by which complaints are processed from the BPD’s Office of Professional Responsibility to the Select Board, serving as a civilian review board.

The Subcommittee is also submitting a major enhancement to the Select Board's ability to effectively function as Police Commissioners and additional mechanisms by which members of the public can communicate their experiences with the BPD to the Select Board and to the BPD.

Policing reforms which promote accountability fall into four categories: Policies and procedures which ensure that "1) police officers obey the law and... treat citizens in a lawful, respectful, and unbiased manner; 2) incidents of alleged misconduct are properly reported and then investigated thoroughly and fairly; 3) proven incidents of misconduct result in appropriate discipline; and 4) police departments take proactive steps to prevent officer misconduct in the future."⁵

With these areas of improvement in mind, the Subcommittee reached consensus on the following recommendations to the Select Board and to the BPD, which are elaborated in more detail in the Subcommittee's report.

1. That the Select Board institute a standing committee—what we have called the Police Commissioners Advisory Committee ("PCAC")—to strengthen the civilian oversight of the Police Department provided by the Select Board. As outlined in the PCAC charge included in the Appendix, the PCAC would be tasked with the following responsibilities: reviewing policing practices and policies on an ongoing basis; serving as a liaison with the public on police issues; and providing an additional layer of oversight of complaint investigations.
2. That the Select Board recommend to the Diversity Office that they create a Liaison position that would be available to assist complainants in filing complaints with the BPD and would also be able to handle some of the many responsibilities placed on the Diversity Office by various Town Meetings.
3. That the Select Board permit the Reforms Committee to continue its work to revise and update the complaint procedures by, among other changes: (a) providing additional intake options for complaints against police employees; allowing complaints to be filed online (this was a technology based change to the current Complaint procedures that was completed during the Committee's work); modifying data reporting requirements to increase transparency by providing to the public additional information about complaints, including discipline; strengthening and formalizing the mediation processes for less serious

⁵ Walker, S., 2012. Institutionalizing police accountability reforms: The problem of making police reforms endure. *St. Louis U. Pub. L. Rev.*, 32, p.59.

complaints; and making other changes to increase the accessibility and readability of the complaints process.

4. That the Select Board, Police Department, Town IT, and Diversity Office approve a new survey procedure (akin to a customer satisfaction survey) for members of the public to provide feedback on civilian encounters. This would provide a more general way to obtain feedback from the public about the performance of the Police Department than relying solely on complaints and commendations, which is the current practice. We have provided an online survey form and associated procedures to pilot this suggestion; going forward, the Police Department might consider randomly sampling people who have encountered the Police Department and surveying them about their experiences.
5. That the PCAC work with the Police Department to implement new policies and procedures required by the Police Reform Law, including the requirement that “A law enforcement agency . . . develop and implement a policy and procedure for law enforcement personnel to report abuse by other law enforcement personnel without fear of retaliation or actual retaliation.”
6. That the Police Department’s stated mission and goals include more explicit commitments to promoting equitable services by combatting profiling and other forms of disparate treatment and to reflect “the right to bias-free professional policing” contained in the Police Reform Law.
7. That the Select Board not agree to or authorize any police contract provision that would limit the ability of the Town to impose discipline on officers for misconduct or that would impose onerous and non-transparent procedures before discipline could be imposed.

CIVIL RIGHTS, MILITARIZATION, AND MASS EVENTS

The goals of the Subcommittee include: (1) Analyzing racial disparities in policing, both perceived and real; identifying the extent to which disparities exist in various aspects of policing in Brookline; reviewing the extent to which civilian racial profiling occurs (e.g., suspicious person calls); developing ways to reduce or eliminate such disparities and the underlying biases; (2) Reviewing indicia of militarization of BPD equipment and tactics⁶; and (3) reviewing policies and practices used in policing of mass events.

⁶ The Subcommittee received and reviewed the Military Equipment Report of the Surveillance Technology and Military Equipment Study Committee and presented that committee with its comments. The Subcommittee’s comments cited areas of the report that should be updated to incorporate provisions of

The members of the Subcommittee are Paul Yee, Chair, Bernard Greene, Casey Hatchett, and Martin Rosenthal. Also participating in the Subcommittee's work is retired Brookline Police Chief Daniel O'Leary who is a non-voting expert consultant.

The Subcommittee met and analyzed extensive public information available on the Town of Brookline Police Department website (<https://www.brooklinepolice.com>), which contains information such as Annual Reports with crime statistics and analysis, the Manual with the Policies and Procedures, Rules and Regulations, Year End Racial Disparities Report, and Year End Race and Gender Reports. The subcommittee also received additional information and data from the BPD through Retired Chief O'Leary and Sgt. Casey Hatchett and other members of the Select Board's Committee on Policing Reforms that were not available on the website or that had to be manually created. The Subcommittee also reviewed presentations and data provided to the meetings of the Task Force to Reimagine Policing. Some of the key information and data which the subcommittee looked at and relied upon are attached at Appendix C.

The Subcommittee, and indeed the full Reforms Committee, takes very seriously the issue of profiling, which is at odds with our community's values, and which the BPD has taken seriously now for four decades. Unfortunately, this is a problem that is endemic in American communities. While we may never be able to entirely eliminate unconscious bias and other biases, we need to keep striving to reduce its impact in the BPD.

Recommendations:

1. That the Select Board task the PCAC to prioritize the following tasks:
 - a. To review and report to the Select Board the results of its analysis of apparent disparities in traffic stops, field interrogations, and arrests (i) between nonresident and resident traffic stops, (ii) between White nonresidents and Black nonresidents, (iii) between Black residents and White residents, and (iv) in the interactions of officers after traffic stops between White nonresidents and Black nonresidents.
 - b. To integrate disparities data into specific policy reforms that can be recommended to the Select Board, including improving supervision, accountability, incentives, and disincentives.
 - c. To review and revise or update the BPD Manual to address the issues listed in the body of the Subcommittee's report, and to ensure that all General Orders are in compliance with any changes or recommendations set forth in the Police Reform Act.

the subsequently enacted Police Reform Law. The Military Equipment Report as presented to the Subcommittee prior to the Police Reform Law is included in Appendix C.

- d. To develop a policy that can be recommended to the Select Board to guide the discretion of the BPD's police prosecutor.
 - e. To examine the procedures used by supervisory officers to review the activity of officers under their command relating to racial or other disparities in field interviews, moving violations, and arrests.
 - f. To examine the procedures governing the supervising officer's follow up for officers whose activities may involve disparate treatment.
 - g. To examine suspicious person/activity calls to identify civilian biases and recommend techniques to the BPD to properly handle such calls.
2. That the Select Board direct the BPD to review and implement as appropriate the following:
- a. To enter additional traffic citation data in its reports on vehicle stops to include time of stop, address of the traffic stop location, and whether the stopped person was a resident or nonresident.
 - b. To work with the PCAC and the Town's Community Engagement Strategist to present its extensive published racial/gender disparities data to the public to (i) explain the data and how it's used to identify and reduce racial disparities and (ii) provide factual transparent information to promote trust between the BPD and the community.
 - c. To train dispatchers to ask for and include additional information in the CAD record of "suspicious person" or "suspicious activity" calls, such as specific details of what is suspicious about a person, vehicle, or activity and to ascertain and include, to the extent possible, race, gender, ethnicity and other specifics about the subject of their call.
 - d. To require Patrol Supervisors to continue to monitor suspicious person or suspicious activity calls and request additional information from dispatch when appropriate to determine if there is a legitimate concern that has been articulated as to the suspicious activity and/or if there may be bias on behalf of the caller so that the officer responding to the call has necessary information to respond properly.
 - e. That the BPD train officers to include specific details in their call back as to the findings of the suspicious activity call so that the BPD can include such calls in its racial disparities data base.
 - f. That the PCAC and the BPD include in community engagement sessions with residents educational reminders regarding racial or other biases that may be reasons for inappropriately labeling a person or activity as suspicious due to a person's race or other attribute.
 - g. That the BPD include in its training of dispatchers additional information for inclusion in the CAD record for suspicious activity by callers so that

- the BPD can monitor such calls and provide officers with sufficient information to appropriately respond to the call.
- h. That the BPD develop a tracking system that accounts for all search warrants obtained from a court.
 - i. That the BPD develop a system to track the times and incident types when providing assistance to another policing agency when there is no formal agreement pursuant to M.G.L. c. 41 §99.
3. That the BPD draft a policy for Select Board issuance that requires any outside law enforcement official assisting the BPD to conspicuously display at all times a clearly identifiable badge, patch or Department name on the outermost part of any clothing, uniform, or gear/equipment to enable any person to ascertain the identity of the official. That the following items be included in the budget when budget conditions allow:
- a. That the Town budget include additional analytical staff to focus on traffic analysis, because of the volume of traffic stops, traffic crashes and traffic enforcement requests from residents.
 - b. To consider the funding of an accurate benchmark study or studies to determine the extent of disparate treatment and to measure the effectiveness of any changes in policing over time.
4. That the PCAC work with the BPD to examine provisions in the police manual concerning officer discretion and, if warranted, recommend to the Select Board policy changes that list specific factors officers should consider in deciding whether to use their discretion, for example to issue a citation or give a written or verbal warning or the decision to make an arrest.

COMMUNITY OUTREACH, YOUTH, AND NON-TRADITIONAL ROLES.

Goals of the Subcommittee are to (1) Review, critique, and improve police functions of outreach to communities, especially youth. (2) Review, critique, and improve specific non-traditional services provided by the BPD, including School Resource Officers, Walk and Talk officers in Brookline Housing Authority communities, Community Crisis Intervention and related services, autism spectrum disorder supports, protection of houses of worship and other vulnerable institutions and persons.

The Subcommittee identified the following areas of work within the Brookline Police Department as its primary focus: the Walk and Talk Unit, School Resource Officers, Homelessness, Crisis Intervention, Emergency Management and Domestic Violence.

The following are the programmatic recommendations for each of the areas based on what the Subcommittee learned and what it heard:

Recommendations:

Homelessness

1. That Town departments support the development of the nascent Task Force on Homelessness, which consists of representatives of the Brookline Police Department, Department of Public Health and Human Services, Department of Public Works, the Brookline Community Mental Health Center, Veteran's Affairs, the Brookline Library and a Town constable, which has already had an organizing meeting.
2. That the Town fund a new staff position (full or part time, through town funds or a grant) in the Health and Human Services Department to be the primary person to manage homelessness issues in Brookline (the "Staff Person").
3. That the Staff Person provide both wellness checks/street outreach to people who are homeless as well as long term problem solving to address the needs of homeless individuals and the public health, sanitation and quality of life concerns often caused by homeless encampments.
4. That the Staff Person include in their responsibilities education of the public concerning homelessness issues, including that homelessness is not a crime, that homelessness often coexists with mental health needs, how the public can alert the Town of concerns they have or problems they are experiencing as a result of homeless encampments, and the respective roles of the Staff Person, the BPD, and other Town agencies in providing services to the homeless population.

Walk and Talk Program

Based on positive and negative feedback from (i) a survey of BHA residents, (ii) interviews conducted with BPD officers and BHA staff, (iii) commentary from residents of BHA, and (iv) other information gathered from the BPD, BHA, BHA residents, and others about the functioning of the Walk and Talk Program, the Subcommittee makes the following recommendations:

1. That the Walk and Talk Unit continue at BHA properties to serve the needs of BHA residents.
2. That the Subcommittee continue its work after the Committee Report is submitted to conduct outreach to youth via Teen Center and BHA focus groups to ensure Walk and Talk/ youth interactions are meaningful and wanted and to receive input and suggestions from youth and BHA focus groups.

3. That a joint Mission Statement on the goals and objectives of the Walk and Talk Program between BHA/BPD be adopted and that input from residents and children of residents, with special outreach to people of color and youth, be included in the development of the statement.
4. That the BPD commit to annual surveys on the program and specific topics to ensure the Walk and Talk program is continuing to meet the needs of BHA residents.
5. That Walk and Talk officers and BHA management conduct focus groups with residents and increase the number of community meetings (preferably in person, post-COVID) with residents, including youth, with special outreach to youth of color, staff, and Brookline Housing Authority Board members.
6. That the Walk and Talk Unit develop a brochure/handout that BHA can share with residents that introduces the officers, their services, their contact information and the Mission Statement of the program. There can also be a link to the new Civilian Feedback Form being recommended by the Accountability Subcommittee.
7. That the Town Administrator's budget absorb the \$15,000 annual payment by BHA to the BPD for Walk and Talk programs, events, supplies and other expenses.
8. That the BPD expand the Walk and Talk program to four officers with one officer assigned to the day shift who can work with the BPD Elder Affairs Officer and the Health and Human Services Department to focus on supporting elderly residents, who comprise 56% of the BHA population.

School Resource Officer Program

The School Resource Officer Program is a multifaceted program that supports healthy, trusting relationships between police and students and supports students making healthy, positive choices. In order to address concerns raised during this process about the SRO program, we recommend the following:

1. That the School Resource Officer program remain an important part of the middle and high school programs.

2. That the Police Chief develop a General Order within the BPD for submission to the Select Board that outlines the School Resource Officer program and formalizes oversight, PSB involvement, and requirements/limitations of the program.
3. That the SROs be included in the PSB teacher training/professional development that is relevant to student safety, racial justice, bullying and social media/online usage, and additional topics deemed relevant.
4. That the SROs attend principal meetings at least twice per year, and additionally as requested.
5. That the supervisor of the SROs (Deputy Superintendent of the Community Service Division or their designee) meet with the Superintendent of the Public Schools of Brookline at least once per year.
6. That the Superintendent of the Public Schools of Brookline (or their designee) participate in the interview/hiring process of SRO positions.
7. That the SROs host a forum for 6th grade students entering the AWARE program at the start of the program each year.
8. That the SRO at Brookline High School continue discussions with impacted communities and the school administration at the high school regarding the location of the SRO office.

MENTAL HEALTH AND SUBSTANCE MISUSE.

The Mental Health and Substance Misuse Disorders Subcommittee is charged with reviewing and reporting on the current community resources supporting individuals in Brookline with mental health and substance misuse disorders during times of crisis.

The Subcommittee is also charged with analyzing the role of the BPD during such crises and making recommendations to implement improvements at the BPD in their provision of services in support of vulnerable individuals or recommendations to engage or create alternative non-police options as appropriate. Because of the Commonwealth's failure to provide adequate services for individuals before and after the onset of a crisis, our recommendations will include proposed advocacy directed towards the legislature and executive branch agencies.

Recommendations of the Subcommittee:

1. That the Town assume the cost of training 100% of new Brookline Police officers in CIT and 100% of new dispatchers in mental health first aid once the state Department of Mental Health funding that has allowed Brookline to provide CIT training to all of its officers ends.
2. That the Town fully fund 2 FTE social workers in the BPD, at least one of which should be licensed to facilitate signing Section 12 petitions. This increase could be timed to pick up the funding for Annabel Lane, currently the only social worker in the BPD, when grant funding for her position expires. A second position to allow for some evening and weekend coverage would expand the frequency of embedded mental health expertise in Town emergency responses.
3. That the Department of Public Health and Human Services investigate contracting with providers of clinical services to be used by the BPD for mental health or substance use crises that can receive Medicaid reimbursements where such clinical services if contracted by the BPD could not be reimbursed.
4. That BPD Crisis Intervention Teams in coordination with the Health and Human Services Department collaborate with BEST on additional inservice training for Brookline Police officers to increase utilization of telehealth options and build on telehealth utilization experience obtained during COVID to assist officers in assessing whether or not mental health expertise or referral is the best disposition – especially for “on the line” cases.
5. That the Department of Public Health and Human Services support the nascent Homelessness Task Force utilizing a roundtable model similar to the Hoarding Task Force.
6. That the Department of Public Health and Human Services explore options with local private providers, such as The Brookline Center, to gain contracts for Community Service Programs for wrap-around out-patient services and PACT services to improve access for these comprehensive services for individuals with complex and serious mental illnesses, particularly during non-business hours.
7. That the Town work with its House and Senate State representatives to advocate for legislation that requires all private insurers to pay for emergency services for mental health evaluations and legislation that supports expansion of walk-in urgent mental health services.

8. That the Department of Public Health and Human Services offer to serve as a roundtable partner on either a Suffolk County or a Norfolk County Restoration Center implementation team, once such a team is organized.
9. That the Town adopt policies, practices, and compensation that support retention of police officers to maximize the return on its investment in sophisticated CIT training and to provide continuity for people suffering from mental health or substance misuse disorders who can be helped by properly trained CIT officers and back-up social workers or other social service personnel.
10. That the Town evaluate the current operation of the dispatch center and the BPD's response to mental health 9-1-1 calls to look for opportunities for improvement.
11. That the Town's Community Engagement Strategist work with the BPD and the Health and Human Services Department on educational programs to inform the community about the essential and non-transferable role that the BPD together with its in-house social worker and other social service workers play in mental health and substance misuse crises.
12. That the Town explore options with comprehensive healthcare systems already invested in Brookline to develop a public-private partnership for the purpose of creating in Brookline comprehensive medical/psychiatric 24 hour ambulatory care services with walk-in capacity and follow-up care.
13. That the Town and BPD monitor the recommendations for changes to emergency response by the Community Policing and Behavioral Health Advisory Council and prepare to implement recommended improvements in policies and procedures when they are promulgated on or before July 1, 2023.

PERSONNEL

The goal of the Subcommittee is to review, critique, and improve or recommend options for programs and services impacting BPD personnel; Civil Service; governance of BPD by Select Board; officer training and education; officer wellness.

The Personnel Subcommittee of the Select Board Committee on Policing Reforms is charged with responding to the memorandum from Town Administrator Mel Kleckner dated July 7, 2020, (Appendix 1), regarding exploring the Town's withdrawal from Civil Service for police and fire.

Additionally, the Subcommittee is asked to report on the existing governance of the Brookline Police Department and make any recommendations for changes or improvements, including options to assist the Police Commissioners in their role. Further, the Subcommittee is requested to assess the Brookline Police Department's current policies and practices around health and wellness, recruitment, hiring, promotions, and training and make recommendations for opportunities for improvement of current practices.

Finally, the Subcommittee is cognizant of the changes to civil service proceedings that are impacting how the Civil Service Commission will be able to operate in key areas such as officer discipline and appeals, which are effective on July 1, 2021. In addition the Police Reform Law has established a Commission charged with studying and examining the civil service law, personal administration rules, hiring procedures, and by-laws for municipalities not subject to the civil service law. The Commission is required to submit its report, along with legislative recommendations by September 30, 2021. This will establish the environment within which any decision regarding Brookline's Civil Service status will be made.

Recommendations

1. That the BPD adopt the Subcommittee's proposed revision to its Mission Statement as submitted as part of the BPD budget.
2. That the Town Administrator (i) weigh the the pros and cons of leaving Civil Service as identified by the Subcommittee, (ii) begin discussions with police and fire unions to identify and acknowledge their legitimate concerns and issues, (iii) obtain the assent of the Select Board, (iv) begin the process of leaving Civil Service with the understanding that the completion of the report of the Commission on Civil Service may govern legislature's willingness to act or the Town's desire to act, (v) have a "Plan B" option of seeking home rule powers to change the preferences for hiring and promotions or other applicable powers if leaving Civil Service becomes more difficult or less desirable.
3. That the Select Board appoint a "Plan B" working group to consider preparing a warrant article for submitting a home rule petition to expand the Town's power to give preferences to different categories of potential applicants to the Police and Fire Departments, such as METCO students.

4. That the BPD Incorporate into the Police Manual an oath of office that includes pledging to uphold the Constitution of the United States in addition to the Constitution of the Commonwealth.
5. That the Select Board take steps to increase stability in leadership for the BPD by filling vacancies at the Deputy and Lieutenant levels by laying out a clear timeline and process for interim leadership and a search for a new Chief, including opportunity for public input.
6. That the BPD implement a more robust Police Cadet Program to assist in diversity hiring.
7. That the Select Board examine options to increase retention and promotions, including examining perceived pay disparities between Brookline and neighboring communities and the Quinn stipend disparity for new hires.
8. That the Select Board consider steps to incentivize officers to take Civil Service promotional exams, such as (a) subsidizing some of the costs associated with taking the exams, (b) urging the BPD to support study groups for promotion exam candidates, and (c) urging the BPD to formalize a mentorship program to assist candidates for promotions.
9. That the BPD and Human Resources Department systematically conduct exit interviews with all departing officers, including prior departed officers and Chief Lipson to fully understand barriers to retention.
10. That the BPD develop police specific counseling or chaplaincy programs to provide mental health and substance misuse services in addition to the Employee Assistance Program.
11. That the BPD include in its meetings with public school leadership on bullying and related problems the need for school sensitivity to bullying, shaming, and isolating of police officers' children when there are intense discussions and actions related to social and racial justice and other emotionally intense issues involving police.

Subcommittee on Accountability

Outline of Contents

1. Introduction
2. Civilian Complaints Policy
 - a. Summary of work to date
 - b. Review of current policy
 - c. Weaknesses of the current process
 - d. Improving the process for civilian complaints - Establishing a Police Commissioner Advisory Committee
 - e. Recommendations for improving current policy
3. Civilian Feedback Form
4. Changes to Policy and Regulations
 - a. 1F. Required Conduct
 - b. 1G. Prohibited Conduct
 - c. Use of Force
 - d. 1D. Conflict of Interest
 - e. Social Media Policy
5. Changes to Police Mission Statement

Recommendations

Supporting Documents and Materials in Appendix B to the Report

Introduction

Members: Michael Zoorob (chair), Raj Dhanda, Bernard Greene, Jonathan Mande, Marty Rosenthal, Robert Sable, Dwaigh Tyndal, Ronald Wilkinson.

Policing reforms which promote accountability fall into four categories: Policies and procedures which ensure that “1) police officers obey the law and... treat citizens in a lawful, respectful, and unbiased manner; 2) incidents of alleged misconduct are properly reported and then investigated thoroughly and fairly; 3) proven incidents of misconduct result in appropriate discipline; and 4) police departments take proactive steps to prevent officer misconduct in the future.”⁷ To advance these aims, the Accountability Subcommittee has extensively reviewed—and suggested recommendations to improve—the civilian complaints policy and process and relevant provisions in the police manual. We have also proposed new procedures for the Department to receive feedback on its performance from members of the public.

The Subcommittee reached consensus on the following recommendations to the Select Board and to the Police Department, which are elaborated in more detail in this document:

1. The Select Board should institute a standing committee—what we have called the Police Commissioners Advisory Committee—tasked with reviewing policing practices and policies; liaising with the public about police issues; and providing an additional oversight layer of complaint investigations in order to strengthen the civilian oversight of the Police Department provided by the Select Board.
2. The Select Board should revise and update the complaint procedures by, among other changes, creating a Liaison from the Office of Diversity who assists complainants; provide additional intake options for complaints against police employees; allow complaints to be filed online (this was accomplished during the committee’s work); modify data reporting requirements to increase transparency by providing to the public additional information about complaints, including discipline, to the public; strengthen and formalize the mediation processes for less serious complaints; and make other changes to increase the accessibility and readability of the complaints process. We will continue to work on revising the document for consideration by the Select Board in the near future.

⁷ Walker, S., 2012. Institutionalizing police accountability reforms: The problem of making police reforms endure. *St. Louis U. Pub. L. Rev.*, 32, p.59.

3. The Select Board, Police Department, Town IT, and Diversity Office should institute a new survey procedure (akin to a customer satisfaction survey) for members of the public to provide feedback on civilian encounters. This would provide a more general way to obtain feedback from the public about the performance of the Police Department than relying solely on complaints and commendations. We have provided an online survey form and associated procedures to pilot this suggestion, which includes making the survey easily accessible to the public on a voluntary basis via the town website and through social media. Going forward, the Department may also consider randomly sampling people who have encountered the Police Department and surveying them.
4. The Select Board and Police Department should work to implement new policies and procedures that foster a culture of accountability, including more explicit policies on the duties to report misconduct and protecting whistleblowers from retaliation. The need for this change is heightened by the recent policing reform legislation which became law in December 2020, which stipulates that “A law enforcement agency shall develop and implement a policy and procedure for law enforcement personnel to report abuse by other law enforcement personnel without fear of retaliation or actual retaliation.” While the manual contains some relevant items—importantly, the use of force policy requires bystander intervention and the civilian complaints policy briefly mentions officers reporting peer misconduct—we have proposed some additions and modifications to strengthen these provisions.
5. The Police Department’s stated mission and goals should include more explicit commitments to promoting equitable services by combatting profiling and other forms of disparate treatment and to reflect “the right to bias-free professional policing.”⁸

There are many areas where Town policies meet best practices on police accountability. Campaign Zero, for example, is pushing for cities across the country to remove provisions from their contracts with police unions which hinder accountability. “From destroying records of an officer’s past misconduct, to disqualifying new complaints of misconduct from being investigated or resulting in discipline: we must demand cities remove all matters of investigations, discipline, and records retention from the police union contracts.”⁹ In Brookline’s Police Union Contract, the right to

⁸ Section 37 of “An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth” [Chapter. 253 of the Acts of 2020 amends chapter 12 of the General Laws section 11H of which section 11H(b) is a part.

⁹ <https://nixthe6.org/no-more>

discipline for just cause is a management right, as recommended by Campaign Zero.¹⁰ Similarly, the Contract does not contain any provisions limiting or hindering disciplinary action, such as by providing officers with additional time to review complaints against them before they are interviewed, or expunging complaint records of officers. Under no circumstances should the Town allow the inclusion of any provisions in a future contract which limit discipline or limit disciplinary records.

1. Civilian Complaints Policy

A. Summary of work

Our review of the complaints policy included reviewing testimony from complainants, Town employees, policing experts (especially Jack McDevitt and Samuel Walker), local police civil rights attorney Howard Friedman, Departmental statistics and reports on complaints, and the policies of other communities. We received and reviewed three years of redacted investigation reports provided by Lt. Campbell. We also interviewed Bobbie Knable and Kelly Race (the authors of the 2017 assessment of the complaints process), Ann Braga (the Town's Human Resources Department head), Lt. Paul Campbell (the Police Department's internal affairs officer, who oversees civilian complaints against police employees), Professor Jack McDevitt, and 4 civilians who filed complaints against police department employees in recent years.

Our review was also informed by previous studies of the complaints process in Brookline, including the 2017 Knable/Race report on the complaints process, the 2014 assessment of the complaints process, the 2009 Report Concerning Citizen Police Complaint Procedures, as well as the broader 1987 study on police civilian relations and its update in 1998.

To examine and track the trends in the volume of complaints, complaint outcomes, and complaint and complainant characteristics, we compiled data from the Department's annual reports and Brookline's 2009, 2014, and 2017 studies of the complaint process. The 2009 study provided the total number of complaints over the 1996-2017 period. The Brookline Police Department's end of year reports from 2012 to 2019 (available on the Department's website) include both the counts of annual complaints as well as, for each complaint, fields pertaining to the race and gender of the employee(s) subject to the

¹⁰ The relevant section reads, with our emphasis, "Among the Management Rights that are vested with the Town are the following: the right to hire, promote, and transfer, *the right for just cause to give written reprimands, suspend, demote, discharge, or otherwise discipline*, and the right to relieve employees from duty because of insufficient funds. Just cause shall not apply to verbal warnings and verbal reprimands or to probationary employees."

complaint, the race and gender of the complainant, the nature of the complaint (e.g. rudeness, improper procedure, profiling), and the outcomes of complaints. We compiled these data from each of the annual reports into a single spreadsheet enabling analysis of complaint and complainant characteristics over the years 2012-2019.

B. Review of the current process

Under the current policy, civilians file their complaints against police employees to the Police Department's Office of Professional Responsibility (OPR). Complaints are then handled through internal investigation and review by the Internal Affairs Officer Lt. Paul Campbell, a 22-year veteran of the Police Department, who is the sole employee in the OPR. Lt. Campbell reports to the Police Chief and the Select Board and is otherwise outside of the Police Department chain of command.

At the conclusion of the IAO investigation into the complaint, the IAO's final report is forwarded to the Chief, Select Board, and complainant. The Select Board is permitted to ask for changes to the report or, if a majority of the Board wishes, retain outside counsel to investigate ("If a majority of the Select Board considers a complaint particularly complicated or to require additional effort or expertise, special counsel may be retained to conduct an investigation"). In addition, the complainant receives instructions on how to file an appeal of the case to the Select Board. If the complainant chooses to file an appeal, the Select Board revisits the case *de novo*. Typically, the Select Board hires an outside hearing officer to revisit appealed complaints.

Complaint volume. As was noted in the 2009 and 2017 studies of the complaints process in Brookline, there are few civilian complaints filed per year. Moreover, the number of complaints has declined in recent years. Between 1996 and 2007, there were 266 civilian complaints filed against police officers or, on average, 22.2 complaints filed per year (Page 19, 2009 Final Report Concerning Citizen Police Complaint Procedures). Between 2010 and 2020, there were 105 complaints, or, on average, 9.5 complaints filed per year (calculations from numbers found in the 2012 to 2019 End of Year Reports, with the 2012 Report also providing 2010 and 2011 numbers, and correspondence with the Police Department for 2020). In some years (e.g. 2017, 2018, and 2020), the Police Department recorded just two civilian complaints against police officers. As the Knable/Race report indicated, such small numbers of complaints filed are consistent with both a small number of police-civilian encounters in which the civilian feels the police acted inappropriately and/or civilians reporting only a small portion of perceived inappropriate police-civilian encounters to the Police Department (indicating a need for greater effort publicizing the process and boosting its credibility).

Table 1: Complaint Volumes

Year	Complaints	Source
1996-2007	22 (average)	2009 Report Concerning Citizen Police Complaint Procedures (page 20)
2010	26	2012 End of Year Report
2011	17	2012 End of Year Report
2012	5	2012 End of Year Report
2013	14	2013 End of Year Report
2014	7	2014 End of Year Report
2015	14	2015 End of Year Report
2016	8	2016 End of Year Report
2017	2	2017 End of Year Report
2018	2	2018 End of Year Report
2019	8	2019 End of Year Report
2020	2	Correspondence with Police Department

Complaint types. Most complaints against Brookline Police Department employees are classified as involving rudeness or discourtesy (31 of 60, or 51.7%); 12 complaints (20%) involve improper procedure, 8 (13.3%) involve general misconduct, 7 complaints (11.7%) included allegations of racial profiling, and 3 complaints (5%) involved use of excess force.

Compared to Boston and Springfield, the share of complaints against Brookline police employees alleging excessive force is lower, while the share alleging rudeness is higher. In Springfield, where the Department of Justice has documented extensive issues with police misuse of force against civilians, 53 of 308 (or 25%) of civilian complaints against police employees processed by the Community Police Hearing Board in 2016 alleged excessive force.¹¹ In 2018, 33 of 138 (23%) complaints alleged excessive force, while just one complaint alleged discrimination on the basis of race.¹² In Boston, according to the Internal Affairs Database obtained by the Boston Globe, “Almost a quarter of the allegations concerned disrespectful treatment by police; another 22 percent were for neglect of duty or unreasonable judgment [and the] 152 use of force allegations were the third most common, making up 7 percent of allegations.”¹³ Complaint information for Newton was available via media reports for the years 2019 and 2020 only, and the available information is limited. In 2019, it appears that of 9 complaints filed against police employees in 2019, 2 allege profiling or bias (22%) while 2 allege rudeness (22%).¹⁴

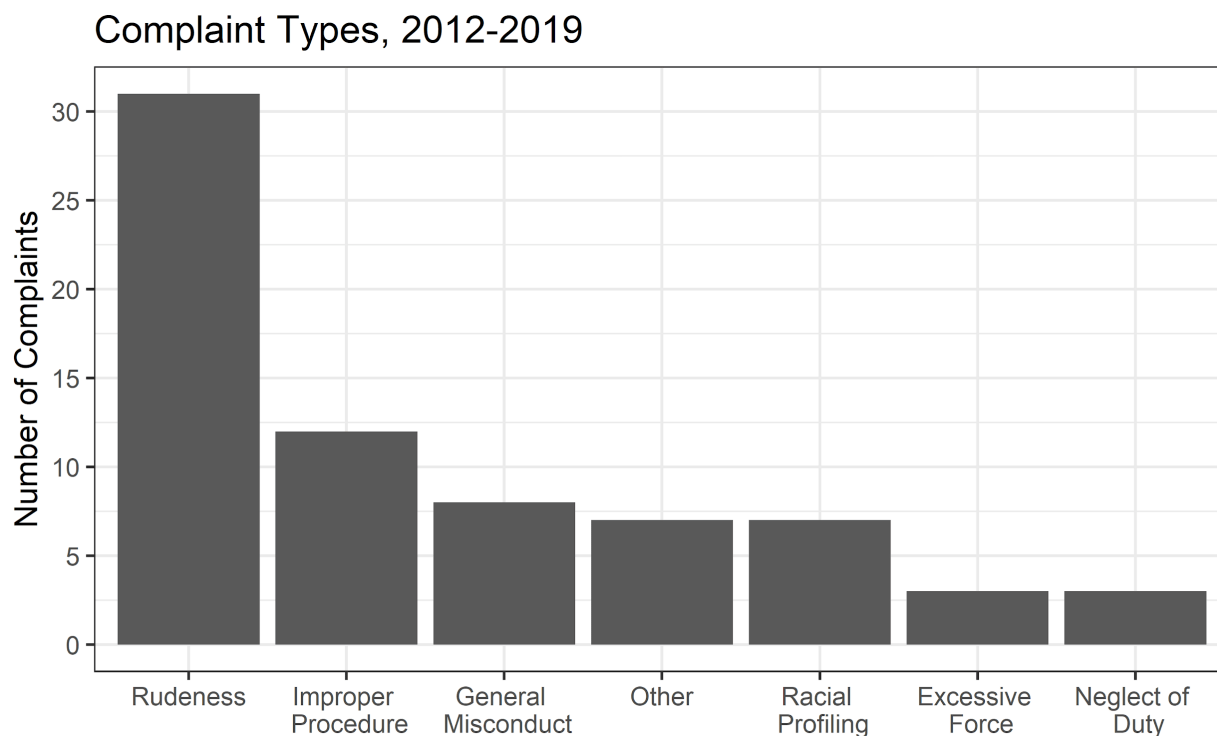
¹¹ https://www.springfield-ma.gov/cos/fileadmin/law/CPHB/CPHB_Annual_Report_2016.pdf

¹² https://www.springfield-ma.gov/cos/fileadmin/law/CPHB/CPHB_Annual_Report_2018.pdf

¹³ <https://www.bostonglobe.com/2020/07/18/metro/within-boston-police-department-complaints-against-officers-are-rarely-confirmed-or-result-punishment/>

¹⁴ <https://patch.com/massachusetts/newton/got-complaints-kudos-newton-police-what-know>

Figure 1: Complaint counts by type of complaint.

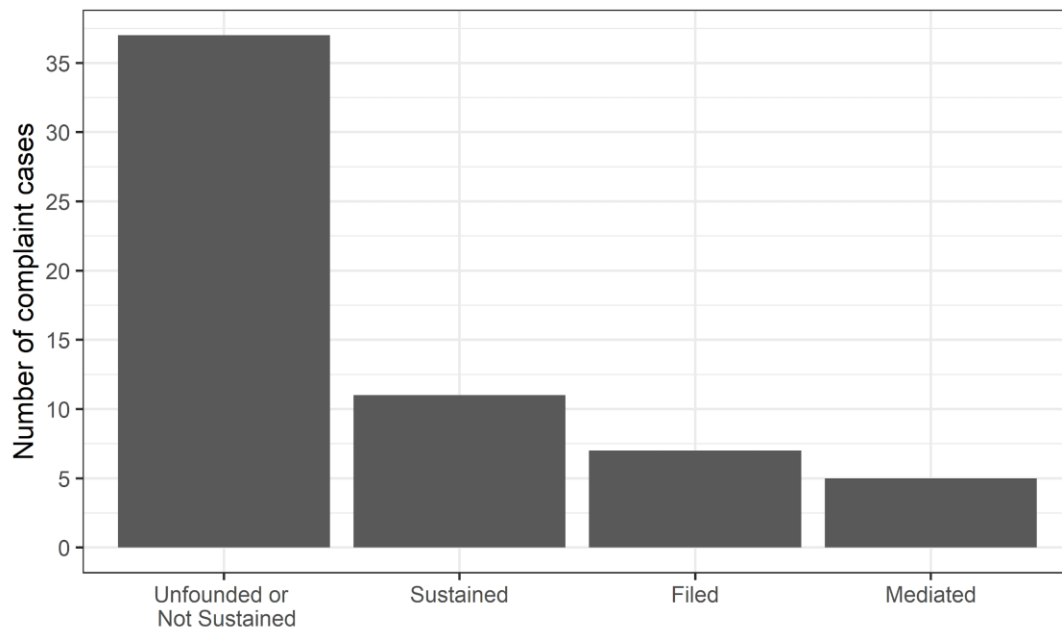


Note: Some complaints contain multiple allegations.

Complainant characteristics. Most complainants (36, or 60%) were recorded as white, 7 were Black (11.7%), 5 Hispanic (8.3%), 4 Asian (6.7%), and 4 Middle Eastern (6.7%). The remaining 4 complainants had no racial information listed. The sex of complainants was balanced, with 30 complainants recorded as male, 28 recorded as female, 1 as unknown, and 1 complaint attributed only to the Brookline Police Department. 56 complaints were made by civilians, while 4 complainants were initiated by BPD employees (2 supervisors, 1 officer) or the BPD itself.

Complaint outcomes. Figure 1 shows the number of complaint findings by outcome (sustained, mediated, etc). Sometimes, a complaint consisted of multiple allegations. If any allegation was sustained, the outcome was categorized as “sustained.” One case whose outcome was “exonerated” is included in the “Not Sustained/Unfounded” category. Of the 60 complaints submitted in the years 2012-2019, 37 (61.7%) resulted in findings of unfounded or not sustained, while 11 (18.3%) were partially or fully sustained. Five complaints (8.3%) were mediated. Seven complaints (10%) were filed—meaning no investigatory action was taken, typically because the alleged misbehaving employee could not be identified or the complainant withdrew the complaint.

Complaint Outcomes, 2012-2019



Complaints initiated by Brookline Police Department employees were more likely to be sustained than those initiated by civilians. All 4 of the 4 complaints initiated by BPD officials were sustained, while 7 of the 56 civilian complaints were sustained. Complaint outcomes also varied by the nature of the complaint. No complaints for racial profiling or excessive force were sustained.

There were 7 (at least partially) sustained civilian complaints out of 56 civilian complaints, resulting in a 12.5% sustain rate (an additional 5 complaints – about 9% – were resolved with the agreement of complainants via mediation). The share of complaints that were sustained does not seem unusual compared to other communities; it is higher than Cambridge and Boston and somewhat lower than Newton (Samuel Walker, a policing scholar, gives a ballpark figure of 10% sustain rate nationwide). In Cambridge, between 2013 and 2018, just 2 of the 29 complaints investigated by the civilian Police Review Advisory Board were (partially) sustained (6.9%).¹⁵ In Boston, about 10.8% of the civilian complaints against police officers between 2016 and early 2020 were sustained (148 of 1367).¹⁶ In Newton, there were 63 complaints against police employees investigated by the Police Department between 2016 and 2020. Of these, 10 were sustained, or about 15.8%.¹⁷ Because of differences in recording

¹⁵<https://www.cambridgeday.com/2019/02/01/police-board-drag-its-heels-ducks-questions-on-commissioner-actions-that-alarmed-aclu/>

¹⁶https://www.bostonglobe.com/2020/07/18/metro/within-boston-police-department-complaints-against-officers-are-rarely-confirmed-or-result-punishment/?p1=Article_Inline_Text_Link

¹⁷ <https://patch.com/massachusetts/newton/got-complaints-kudos-newton-police-what-know>
<https://patch.com/massachusetts/newton/10-complaints-against-newton-police-2020>

practices between cities, scholars caution that the sustain rate may not be comparable between communities.¹⁸

Select Board Appeals. We received information on Select Board appeals from Lt Paul Campbell. Since 2015, five appeals of complaint decisions have been made to the Select Board (3 in 2015, 1 in 2016, and 1 in 2019). In the first 2015 case, a police officer appealed a complaint which was sustained, but subsequently withdrew the appeal after agreeing with the discipline. Also in 2015, both a police officer and a complainant appealed the finding of a case which was sustained. The Select Board did not hear this appeal, and Lt Campbell was unable to ascertain why. In the final 2015 case and the 2016 case, the Select Board hired an independent hearing officer to hear the cases, which were both filed by the same attorney. The complainants did not proceed with the appeal. In the 2019 case, the Select Board scheduled a hearing but the complainant did not move forward with the appeal.

C. Weaknesses of the current process

1. Multiple complaints processes

In addition to the Police Department civilian complaints policy, the Human Resources Department has a complaints policy covering all Town employees pertaining to Discrimination, Harrassment, and Retaliation. There is also a complaints process being developed through the Commission for Diversity, Inclusion, and Community Relations. There are no clear rules for how these processes interface with one another (something which we hope can be addressed by the addition of a standing Select Board committee on policing). The Human Resources complaints procedure is well-staffed and centered around mediation of complaints, which may be a useful method for addressing many complaints.

2. Select Board appeals may not always be handled as directed by policy.

The 2017 report on the complaints process from Bobbie Knable and Kelly Race notes that, “In our review, we found that not all complainants making appeals to the Select Board were granted the right to be heard by the Select Board or were granted the opportunity in a timely manner. This right was a key element of the 2009 policy. It is critical to the checks and balances on the Police Department in the complaint process.”

¹⁸ Walker, S.E. and Archbold, C.A., 2018. *The New World of Police Accountability*. Sage Publications. Page 161

3. “Biennial Review” of policy is inconsistently undertaken.

The Complaints Procedure adopted in 2009 calls for a biennial (every two years) review of the civilian complaints procedure conducted by 2 civilian appointees and the police chief. However, this requirement for biennial review has not been faithfully followed. There have been just two assessments since the policy was adopted in 2009. In 2017, police chief O’Leary nominated Bobbie Knable and Kelly Race, who were confirmed by the Select Board at their June 27, 2017 meeting. The Knable/Race report notes “This is the second periodic assessment. While the assessment should be completed every two years it was delayed from 2015 to 2017 because of unforeseen circumstances” (page 1). The 2017 Report remains the most recently conducted review. Further, the report made several observations and recommendations about the complaint policy, but these were never voted on. There was an initial Select Board hearing on the 2017 Report in fall 2019, and the Chair indicated that this issue would be revisited in future weeks. However, this did not happen.

4. Select Board’s “public education” plan required by policy may not exist.

The complaint policy adopted in 2009 states that “The Board of Selectmen shall ensure the creation of a plan, subject to biennial review, for educating the public about the complaint process, including on the Town Website.” It is not clear that this has ever happened, and no information about this plan appears to be available. The Knable/Race report notes several ways in which the complaints policy could better be publicized, including via social media.

There seems to be a need for such a public education campaign. Many members of the public may not know how to file a complaint against police employees. In the Reimagining Taskforce / Tufts University policing survey of Brookline residents, a majority of respondents stated they would be comfortable filing a complaint against a police employee, but a majority of respondents also stated that they were unaware of how to file a complaint.

5. Mediation is an underutilized tool for resolving less serious complaints.

In Brookline, as elsewhere, a majority of complaints against police employees fall into the category of “rudeness/discourtesy.” For complaints of this nature, mediation may be a more effective way to resolve the complainant’s issue to their satisfaction than an adversarial investigation, particularly when there is not (and there often is not) evidence of the underlying events besides the civilian’s account and the officer’s account (such instances typically result in a finding of “not sustained”). Scholars of police complaints have noted that the traditional adversarial model typically results in both the officer and

the complainant feeling dissatisfied, while mediation results in somewhat better outcomes among both parties.¹⁹

Brookline's complaint policy does stipulate that a complaint can be resolved as “mediated”, but is used only frequently, perhaps because it can only be offered after a full investigation has been completed. There were five complaints resolved by mediation (1 in 2013, 2 in 2015, 1 in 2016, and 1 in 2017) for allegations of improper procedure, racial profiling, rudeness (x2), and general misconduct. It is not clear whether, in other instances, an offer was extended for complainants to undergo mediation and the complainant or officer rejected this offer.

6. Credibility of an internal review process

There appears to be significant concern from complainants and members of the community, including some members of our Subcommittee, that an internal review process for investigating complaints is unlikely to be impartial. Instead, many people believe that the current internal process is “stacked against” complainants and biased in favor of police officers. (While Brookline’s existing process is not fully internal – there is a process for appealing to the Select Board to conduct an external investigation – these appeals are fairly rare.) Whatever the actual merits of this belief, if the complaint process is not perceived as credible, then individuals may not be willing to file complaints, undermining core functions of the complaints policy, which exists in part as a channel for obtaining feedback from the public about officer behavior. This concern is not unique to Brookline; it is a concern shared across communities. In Denver, a survey of complainants found that over 80% were dissatisfied with how their complaint was handled, and 90% believed the process was biased in favor of the police.²⁰

Some experts share this concern that “self-policing will necessarily and unavoidably produce a biased result” – even with a well-intentioned and honest police investigator – due to “pressures from all sides that come to bear on internal investigations” including from superiors within the police organization, the police union, elected officials, and fellow officers.”²¹ “Should police be investigating themselves in the first place?” said former Boston police lieutenant Tom Nolan, who once worked in internal investigations and now teaches criminology and criminal justice at Emmanuel College, to the *Boston*

¹⁹ Walker, S., 2002. *Mediating citizen complaints against police officers: A guide for police and community leaders*. US Department of Justice, Office of Community Oriented Policing Services.

²⁰ Walker, S.E. and Archbold, C.A., 2018. *The New World of Police Accountability*. Sage Publications. Page 168.

²¹ Bobb, M., 2003. Civilian oversight of the police in the United States. . *Louis U. Pub. L. Rev.*, 22, p.151.

Globe. “During this time when we’re examining policing on a macro level, we should ask this question.”²²

D. Improving the process for civilian complaints

The subcommittee is continuing to work on revising the civilian complaints policies and procedures. Some of the recommended changes that will be included in the revised procedures are included below.

1. Creating a new civilian committee to assist with complaints, review internal investigations, hear from the public, and provide ongoing feedback into policing policies in Brookline.

The Final Report of President Obama’s Task Force on 21st Century Policing notes that “Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community” (26). Under Massachusetts General Laws Chapter 41, §97, the Select Board is empowered to “make suitable regulations governing the police department and the officers thereof.”²³ Brookline General Bylaw Section 3.1.2.A has formalized the Select Board’s civilian oversight role by giving members the title “Police Commissioners.” In principle, Brookline has a very strong version of civilian oversight: five directly elected civilians in the Select Board have broad powers. These powers include removal of the police chief and police officers “for cause” subject to civil service law. They also include the implementation of all police policies. Those policies have included the Civilian Complaints Policy, which gives the Select Board authority to hear appeals of a decision of the police chief or to retain legal counsel to sit as a hearing officer to hear an appeal. In practice, however, the Select Board has seldom exercised the full range of its civilian oversight powers with the myriad other responsibilities competing for its attention and limited resources at its disposal.

²²<https://www.bostonglobe.com/2020/07/18/metro/within-boston-police-department-complaints-against-officers-are-rarely-confirmed-or-result-punishment/>

²³ There are two versions of the MA General Laws regarding the establishment of Police Departments (§97 and §97A). In 1921, Brookline adopted §97, which gives less authority to the police chief and more authority to the Select Board, and reads in part as follows: “In towns which accept this section ... there shall be a police department established under the direction of the Selectmen, who shall appoint a chief of police and such other police officers as they deem necessary, and fix their compensation ... and the Selectmen may remove such chief or other officers for cause ... The Selectmen may make suitable regulations governing the police department and the officers thereof...” See also *Chief of Police v. Westford*, 365 Mass. 526, 530-31 (1974) (“[T]he primary control of the police department is in the chief of police under §97A and in the Selectmen under §97. ... [T]he Legislature ... has given towns the alternatives of a ‘strong’ chief, a ‘weak’ chief, or no chief at all...”)

To strengthen the Select Board members in carrying out their responsibilities as Police Commissioners in providing effective civilian oversight over the Police Department, we recommend a standing committee of civilians tasked with providing ongoing monitoring and input into police policies, acting as liaison between the public and the police, and providing independent review of internal complaints investigations. This group would be called the Police Commissioners Advisory Committee (PCAC). The PCAC combines a reactive “review” model of civilian oversight (monitoring complaints of police misconduct) with a proactive “auditing” of police policies and procedures.

The current civilian complaints process engages with the Select Board in three ways. First, the Select Board is the body that hears and reviews *de novo* those complaints that civilians or officers appeal for further consideration once presented to them by the Town Administrator. Second, the Select Board with consultation of the Police Chief appoints two civilians to perform a biennial assessment of the complaints process. Third, the Select Board is tasked with ensuring the creation of a plan to educate the public about the civilian complaints process.

In each of these roles, the Select Board’s performance would be enhanced by the creation of the PCAC. The Select Board has not always heard appeals that were filed, as noted by the 2017 review of the complaints policy; the investigation of one complaint was appealed by both the civilian and the officer involved, but the Select Board did not schedule a hearing on either appeals. The biennial assessment of the complaints process has only happened twice since 2009.²⁴ The 2017 review was presented to the Select Board on June 4, 2019 and accepted by the Select Board on October 15, 2019 but the recommendations to revise the Complaint Policy were never voted by the Select Board.²⁵ Regarding public education, it is not clear what actions the Select Board has taken to carry out public education on the complaints process, though the 2017 report mentions some ways to improve this process. The PCAC members could assist the busy Select Board in carrying out these responsibilities – as well as reviewing police practices more generally – in the same way that various other advisory boards assist and report to the

²⁴ The delay was explained as follows in the Select Board minutes for June 4, 2019: “Lt. Campbell responded that there were a number of circumstances causing the delay, former Chief O’Leary took a [medical] leave of absence; I was on leave of absence and the difficulty in getting people to assist in the process, hopefully we will keep this on track.” The review period for both periodic assessments was extended to include all prior cases and years that had not yet been studied.

²⁵ The 2017 review was presented to the Select Board on June 4, 2019 by Bobbie Knable and Kelly Race. Objections to the scope of the review and its methodology were raised by a Select Board member. Because scope and methodology was defined by the terms of the periodic assessment required by the policy, the Chair of the Select Board suggested that they take further comments and revise the policy, including the section requiring a periodic assessment in order to better define the proper scope of the review. On October 15, 2019 the Select Board voted 4-1 to accept the Knable/Race review of the complaint process. The Complaint Policy was not voted. The Policing Reforms Committee’s Subcommittee on Accountability took up the review and revision of the Complaint Policy. Its recommendations will be part of the Committee’s recommendations to the Select Board.

Select Board (e.g. the Housing Advisory Board, Economic Development Advisory Board, and Building Commission). While the Select Board maintains formal policymaking authority, it tends to defer to its dedicated appointees.

Moreover, the PCAC would provide an additional layer of scrutiny to the internal investigations of complaints, providing a “check and balance” on the complaint process. The PCAC would be empowered to review all internal investigations *while they are live* (unlike some other communities, where civilian oversight boards only access the internal investigations after those investigations have been closed). If a majority of PCAC members find an investigation to be deficient, it can refer the complaint back to the IAO for further work; if that is insufficient, the PCAC can recommend that the Select Board take additional action to resolve the complaint, such as hiring an external investigator. The PCAC is also charged with referring suitable complaints to the Human Resources Department for investigation under its Harassment, Discrimination, and Retaliation complaint policy, though how these processes interface with one another is ambiguous and requires some sorting out by the PCAC and Departments.

This proposal does not, however, displace the investigation of police complaints from the Police Department by shifting investigations to an external agency. There are two immediate reasons for this. First, Town Counsel advised us that moving the investigation of complaints outside the Police Department would require collective bargaining with the police union – it would remove work from the bargaining unit and might constitute a substantial change in working conditions for police employees. As a result, such a change can only be implemented when the police union contract is renegotiated. Second, the relatively low volume of complaints (2 in 2020, 8 in 2019, 2 in 2018, and 2 in 2017) makes it difficult to justify the expense of hiring an external investigator, as civil rights attorney Howard Friedman told us. There are also some substantive reasons for keeping this function in the Police Department. Some scholars, such as Northeastern University Professor Jack McDevitt in his discussion with us, suggest that eliminating the adjudication of complaints from the Police Department hinders accountability by letting the Department off the hook for correcting misconduct. “Without responsibility to adjudicate wrongdoing and impose discipline, ... senior executives in the law enforcement agency cannot be held personally accountable for dealing with police misconduct...”²⁶

Importantly, the PCAC’s responsibilities are not limited to reactively monitoring complaints. The group would also, on an ongoing basis, review and audit the formal and informal police department policies and practices and recommend changes to those policies for the Select Board (as Police Commissioners) to implement; assist the Select Board in determining collective bargaining priorities with the police union (including, as

²⁶ Bobb, Merrick. “Civilian oversight of the police in the United States.” St. Louis U. Pub. L. Rev. 22 (2003): 151.

desired, replacing the investigation of police complaints with an external investigator); hold regular public hearings to hear from the public about police issues and to present information about stops, arrests, complaints, and other data pertinent to the Police Department; study police training practices; and interview Police Department employees to hear about their concerns and suggestions for improvement. To effectively carry out these functions, the PCAC would be assisted by non-voting representatives from Town Counsel, the Office of Diversity, Human Resources Department, and the Police Department. There would also be a non-voting Police Union representative.

The PCAC attempts to achieve civilian oversight that is tailored to Brookline by leveraging its strong tradition of volunteerism to make its Town structure work effectively. The Select Board has ample legal authority to oversee the Police Department, but it lacks the skills, expertise, and dedication of volunteers that would give life to these powers.

In the Appendix, please see a working draft of the charge for the PCAC.

2. Improving Accessibility of Complaints Processes

The relatively small numbers of complaints filed are consistent with both a small number of police-civilian encounters in which the civilian feels the police acted inappropriately and/or civilians reporting only a small portion of perceived inappropriate police-civilian encounters to the Police Department. Like the Knable/Race report suspected, we suspect that there are many instances where civilians do not file complaints because they are unfamiliar with the process for doing so. The Department (and Town) should consider further steps for publicizing the process, including by developing and implementing a public education plan. In Section 2 of this report, we outline the development of a new feedback form for civilians to provide feedback on encounters with police which would also connect those who fill out the form to the complaints policy. This form could be shared on the Police Department's social media.

One specific weakness in the accessibility of the complaints process that we identified was that civilians previously were unable to file complaints directly on the Town website (despite the fact that the complaint policy as amended in 2009 specifically indicates that the Town website was a location where individuals could submit complaints.) While civilians could file commendations of police officers through a webform on the website, the process for complaints required navigating through a few different .pdfs on the page, printing the complaint form, and mailing or delivering it to the Police Department. However, the Police Department and Town staff from the IT Department remedied this by producing a web form for filing complaints, which is now live and available for use. The web version of the complaint form is on a webpage which can automatically be translated into other languages via a Google Translate button, responsive to a

recommendation from the the 2017 Knable/Race report, which called for translating the complaints document into non-English languages. However, this automated translation provided by Google is likely to be less accurate than a professional translation. We further recommend that the Police Department endeavour to translate its brochure into other commonly spoken languages in Brookline.

3. Better communicating and resolving inconclusive findings

In many civilian complaint cases, the sole sources of evidence are the testimony of the civilian filing complaints and the officer facing the complaint. These accounts often conflict. Absent footage or other witness testimony, the conflicting testimony typically results in a finding that the complaint is “not sustained” (as there is not a preponderance of evidence that the officer misbehaved). The civilian complainant is likely to find this frustrating. While this problem has no simple solution, we recommend renaming the “Not Sustained” disposition to “Inconclusive”, which provides a better sense of the finding.

4. Implementing body-worn cameras

For the reasons described above, there is often limited information available to determine by a preponderance of evidence whether the actions alleged in a civilian complaint took place. Members of the subcommittee feel that this problem warrants careful examination of the implementation of body-worn cameras as one tool for providing additional information to assist in the resolution of civilian complaints. Several of the complainants we interviewed stated their support for cameras. In the case of one complainant we heard from, the incident occurred at the Police Department front desk and was recorded, which assisted the investigation.²⁷ In other internal investigations cases we reviewed, dispatchers were the subject of complaints, and because the dispatchers phone conversations with civilians are recorded, these recordings supported claims of improper behavior.

5. Improving interview experience for complainants

²⁷ This complaint illustrates the difficulty of achieving certainty in reviewing civilian complaints. The complainant alleged “rudeness/discourtesy.” In the complaint the complainant also said that the officer used a profanity when speaking to them: “Brookline Police gives shit out,” which the officer acknowledged. The officer claimed that he was “trying to be funny and said it in a joking manner.” The internal affairs officer rebuked the officer for the use of profanity to a person who may not want to hear profanity. Nonetheless, the internal affairs officer recommended a finding of unfounded on the allegation of rudeness/discourtesy. The video and audio recording of the encounter, which were made available to the Subcommittee, shows how the same facts can be interpreted differently by different people.

Complainants we interviewed suggested that there were ways in which the process felt stacked against them. Creating a process that complainants feel is fair – even when their complaints are not sustained – is a complex problem. But our conversations with complainants suggest some concrete steps that can mitigate these concerns. First, a non-police employee should be made available to assist complainants with information and by providing, if requested, a neutral presence at any interviews. The IAO should inform complainants and witnesses that they are allowed under the policy to have another person present. Second, all in-person interviews with complainants should be conducted in neutral locations, such as Town Hall or other municipal buildings like Public Health, rather than at the Police Department. Third, intake for complaints should be primarily through a non-Police Town Department, such as the Office of Diversity, or through a civilian body, such as the proposed standing Select Board committee.

6. More systematic approach to mediation of less serious complaints.

The Civilian Complaints Policy as currently written limits when and by whom mediation can take place. It states that mediation of complaints can occur only after an internal investigation is completed, and it states that only the IAO can facilitate mediation. The Policy could be improved by more formally incorporating mediation as a routine method for dealing with appropriate complaints and by allowing an offer of mediation to take place before a full internal investigation is completed. Barbara Attard, then-chair of the Berkeley Police Review Commission, noted that “Investigations of police misconduct complaints have limited efficacy in some types of cases, particularly those that are one-on-one and discourtesy/attitude-based cases. The majority of such cases result in a finding of ‘not sustained.’” Not sustained findings, in turn, often leave both officers and civilians feeling dissatisfied.²⁸

A more systematic approach to mediating appropriate complaints might be achieved by linking the police complaints process more formally with the Human Resources Department, which has the capacity and staff for mediation through its Harrassment, Discrimination, and Retaliation Process. The proposed Select Board standing committee could help liaison between these processes.

7. Improving data reporting in Departmental annual reports

There is a wealth of information about complaints contained within the Department’s year-end reports. However, this could be improved further in a few ways. First, the Department should report the conclusion of cases which were pending investigation at the time of the previous year’s annual report. On several occasions, complaints are

²⁸ Attard, Barbara. 1999. "In Praise of Mediation," The Connection(Winter 1999/2000)

described as “under investigation” in the End of Year report. It is not surprising that, by virtue of the calendar, some complaints are pending resolution at the time of the annual report. However, it is not clear where, if anywhere, the outcomes of these unresolved cases are reported. Final information regarding such complaints should be released in the subsequent year’s report. Second, the Department should report how long a complaint was under investigation before the case was closed. A timely hearing of grievances is an important component of justice. In other jurisdictions, there has been a problem of police complaint cases being left open for many months. This may or may not be the case in Brookline; the data released by the Department does not provide all the necessary information to make a determination. Third, the Department should release additional information on what discipline or remedial action was taken in response to sustained complaints. A fair process produces appropriate disciplinary action in response to wrongdoing, and public confidence in the complaints process would benefit from indication that complaints resulted at least in some occasions in meaningful disciplinary action. While disciplinary information on personnel matters had been exempted from the Open Records Law, the 2020 Police Reform legislation eliminates this exemption for police employees, opening the door to regular disclosure of this information.

2. Civilian Feedback Form

To evaluate concerns about the quality of civilian encounters with Brookline police officers, it is important to have access to reasonably complete and accurate data about such encounters from the perspective of both the police and civilians involved. We already have the police perspective in the form of the reports routinely filed by the officers after these encounters. The only standard way civilians have had to provide their own perspective has been the filing of a formal complaint or a formal commendation regarding the behavior of a police officer. This method is generally considered to be intended for very exceptional cases and is generally used that way. There has been no standard way to get a pulse on how civilians feel about the vast majority of more routine police interactions.

Over the past couple of decades, many public facing institutions have deployed web-based feedback forms to gather timely customer perspectives about the quality of service the institutions provide. Customers are now very familiar with these forms, and the ubiquity of smartphones has made these forms available to a wide, though not universal, swath of the public. The Accountability Subcommittee of the Brookline Police Reform Committee believes that implementing a well-publicized web-based feedback form for civilians to evaluate encounters with the Brookline Police has the potential to provide greatly improved data for understanding the quality of civilian/police interactions.

This data collection method is not expected to be a panacea, but a useful tool among others for understanding issues and improving customer service. To be optimally effective, such a web-based feedback program should be implemented with conscientious monitoring of the feedback received, timely analysis of trends and anomalies, and adequate regard for the rights and privacy of both the police and civilians involved in the interactions reported.

As a pilot implementation to test out and learn from a deployment of such a civilian feedback program, the Accountability Subcommittee has done the following:

- Created a SurveyMonkey based civilian feedback form that can be easily deployed on the town website and on social media and that can be filled out on a smartphone, tablet or computer in about one minute.
- Is recommending a policy and set of procedures to:
 - deploy and manage the form
 - safeguard the data collected
 - provide ongoing monitoring of the data as it comes in to enable the town to make timely responses as needed
 - provide periodic analysis of the aggregated data to detect trends and anomalies that can be acted upon to improve the overall quality of civilian interactions with the Brookline Police.

These recommendations will be submitted by the Accountability Subcommittee to the full Police Reform Committee for endorsement and passed on to the Brookline Select Board for final approval and implementation.

3. Changes to Police Manual

1. Required reporting of misconduct

On page 33 of the police manual, add new item 12 in Section 1F “Required Conduct” of the General Regulations of Brookline Police Rules and Regulations (new language is **bold/underlined**).

12. Duty to Report Misconduct – Immediately report any alleged unlawful conduct or policy violations by other personnel to the uniform Shift Commander, who shall relay this information to the Internal Affairs Officer for further investigation.

Explanation: This is intended to require officers to report any misconduct they witness to the shift supervisor, enshrining a culture of peer oversight and correcting misbehavior

(see an overview of the issues around whistleblowers in police organizations [here](#), [here](#), and [here](#)).

Acting Police Chief Mark Morgan pointed out that this language may be duplicative of existing language elsewhere in the Policy and Procedures section. In the section of the Policy and Procedures pertaining to Civilian Complaints, in the subsection regarding “receiving complaints”, the policy reads “Any officer or employee who has information or evidence of another officer’s or employee’s misconduct shall convey it to the Chief or to the IAO.” We feel that this requirement makes more sense to be included in the Required Conduct section of the manual than in the Civilian Complaints section and is sufficiently important to be included as Required Conduct rather than a note within the Civilian Complaints part of the manual.

2. Prohibition against retaliation (general)

On page 36 of the police manual, add new item 26 in Section 1G “Prohibited Conduct” (new language is **bold/underlined**).

26. Retaliation – Personnel shall not intimidate or otherwise discourage civilians who file or wish to file a complaint against an employee of the Department. Personnel shall not take retaliatory actions against any Town employees who file a complaint against a police officer or reports any alleged misconduct.

Explanation: Civilians who file complaints against police department employees deserve the confidence that they will not face retaliation for doing so. Furthermore, express prohibition against retaliation for filing complaints may protect employees who seek to file complaints (see recent Amy Hall case heard by the Civil Service Commission where a police officer was “admonished for going outside the chain of command” by filing a complaint of harassment with the Human Resources Department).²⁹

3. Prohibition against retaliation (use of force intervention)

On page 459-460 of the police manual (Use of Force Policy; General Order 30.3), under PROCEDURES item 10 “DUTY TO INTERVENE” (new language is **bold/underlined**):

DUTY TO INTERVENE: Sworn employees have an obligation to protect the public and other employees. If officers witness colleagues using excessive or unnecessary force, or anticipate a colleague is about to use excessive or

²⁹ See page 22 of the [findings](#) by Commissioner Bowman.

unnecessary force in any situation, they are required to immediately take action to stop any use of excessive or unnecessary force.

It shall be the policy of this Department that every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another employee when force is being inappropriately applied or is no longer required. **No officer shall retaliate against any officer who stops or attempts to stop the use of perceived excessive or unnecessary force by another officer. No officer shall retaliate against any officer who reports another officer's use of excessive or unnecessary force.**

4. Restrictions on investment or employment in cannabis businesses in Brookline.

On page 34 of the police manual, under item 9 “Improper Associations” in Section 1G “Prohibited Conduct” (new language is **bold/underlined**):

No member of the Department shall henceforth acquire any proprietary interest, either direct or indirectly, in any business which has an alcoholic **or cannabis** license issued by the Town of Brookline, nor shall any member henceforth become employed by such a business in any manner except as a police officer to perform police duties on the premises.

Explanation: Just as the manual prohibits employees from holding interests in alcohol businesses, the role of police employees in cannabis licensing creates a conflict of interest that requires their being prohibited from holding interests in cannabis businesses licensed in Brookline.

5. Social Media Policy

PURPOSE:

The purpose of this policy is to regulate the secure use of social media (i) for Brookline Police Department (“Department” or the “Department”) purposes to enhance communication, collaboration, and information exchange, streamline processes, and foster productivity and (ii) for personal purposes that may impact the Department or the Town. Social media for Department purposes provides potentially valuable means of assisting the Department and its personnel in community outreach, problem-solving, investigations, crime prevention, and other related objectives.

This policy establishes the Department’s position on the uses and management of social media and provides guidance on its management, administration, oversight, and risks.

I. POLICY:

A. This policy identifies potential uses of social media that may be explored as deemed reasonable and appropriate by the Chief of Police or their designee.

B. This policy provides information of a precautionary nature as well as prohibitions on the use of social media for certain purposes by Department personnel.

II. DEFINITIONS

A. **Social Media:** A category of internet-based resources that integrate user-generated content and user participation. This includes, but is not limited to, social networking sites (Facebook, Twitter, Instagram, YouTube, etc.), blogs and news sites.

B. **Social Networks:** Online platforms where users can create profiles, share information, and socialize with others using a range of technology.

C. **Post(s):** Content an individual shares on a social media site.

D. **Department Sanctioned Use:** Use where an Officer is acting as a representative of the Department in an official law enforcement capacity.

III. OTHER CONSIDERATIONS:

A. Potential Uses

1. Social media is a valuable investigative tool when seeking evidence or information about:

- A. Missing or wanted persons;
- B. Gang participation;
- C. Crimes perpetrated online (i.e. cyberbullying);
- D. Background checks
- E. Photos or videos of a crime posted by a participant

2. Social media can be used for community outreach and engagement by:

- A. Providing crime prevention tips

- B. Offering online-reporting opportunities;
- C. Sharing crime maps and data; and
- D. Soliciting tips about unsolved crimes.

3. Social media can be used to make time-sensitive notifications related to:

- A. Road closures;
- B. Special events
- C. Weather emergencies, and
- D. Missing or endangered persons.

4. Social media can be used as a valuable recruitment mechanism, as people often seek employment and volunteer opportunities by searching the internet and social media sites

B. Department Sanctioned Uses

1. All Department social media sites shall be approved by the Chief of Police, or their designee.

2. All Department social media content shall adhere to applicable laws, regulations, and policies, including all information technology and records management policies.

A. Content is subject to public records laws. Relevant records retention schedules also apply to social media.

B. Content must be managed, stored, and retrievable in compliance with public records laws and e-discovery laws, rules, and policies.

3. All Department social media sites should:

A. Indicate that the opinions expressed by visitors do not reflect the opinions of the Department;

B. Indicate posted comments will be monitored periodically and the Department reserves the right to remove obscenities, off-topic comments, personal attacks, and other inappropriate material.

4. Designated Department personnel representing the Department via social media outlets shall do the following:

A. Conduct themselves at all times as representatives of the Department and, accordingly, shall adhere to all Department standards of conduct and proper decorum;

B. Refer to General Order 36.1 News Media Relations/Release of Official Information

C.. Not conduct political activities or private business; and

D. Observe and abide by all copyright/ trademark restrictions in posting materials.

C. Personal Use of Social Media

1. Employees should be aware that anything that they post on social media, even on a personal social media page, may reflect both on themselves personally as well as on the Brookline Police Department. Employees are reminded that anything they post that may reflect negatively on themselves or the Department could lead to disciplinary action being taken by the Department. Employees are reminded that if they identify themselves on social media as a Brookline Police Department employee, that items they choose to post are more likely to reflect on themselves and also the Department.

2. As public employees, Department personnel are cautioned that on or off-duty speech made pursuant to their official duties may not be protected speech under the First Amendment and may form the basis for discipline if deemed detrimental to the Department. Department personnel should assume that their speech and related activity on social media sites could reflect upon their office and the Department.

3. Department personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not reveal sensitive information about the Department's activities (e.g. facts potentially damaging to an ongoing investigation), impair working relationships for which loyalty and confidentiality are important, impede the performance of their duties, impair discipline, or amount to an abuse of authority.

4. Department personnel shall not post any material that could reasonably appear as though the poster is speaking on behalf of the Department,

unless authorized. This includes, but is not limited to, endorsements, speeches, or statements.

5. Department personnel are advised that any content from a social media site, which is downloaded to a Department owned/ issued device, is not considered private and becomes the property of the Department.

6. For the well-being of Officers, Department personnel are cautioned that social media sites are not secure, and that they should NOT:

A. Trust that conversations and postings are private;

B. Expect personal information posted to be protected;

C. Engage in activity that may provide grounds for undermining or impeaching an officer's testimony in criminal proceedings.

D. Engage in activities that may undermine their credibility in the community as fair and impartial law enforcement officers, such as posting communications reasonably seen as derogatory of, or offensive to, persons of a particular race, gender, religion, ethnic background, or other protected class;

E. Post false information that harms the reputation of another person, group, or organization (defamation);

F. Post private facts and personal information about someone without their permission that has not been previously revealed to the public, is not a legitimate public concern, and would be offensive to a reasonable person;

G. Use someone else's name, likeness, or other personal attributes without that person's permission for exploitative purposes; and

H. Post true information that is subject to federal, state, or local privacy restrictions, including without limitation the federal Health Insurance Portability and Accountability Act.

4. Changes to Police Mission Statement

Recognizing that a strong signal of values from police leadership is important to fostering a culture of accountable policing, our subcommittee recommended changing the Police Department's mission statements to better reflect community commitments and values of fair policing. While the timing constraints of the budget calendar prevented our working on this extensively, we are pleased to see some changes in how the Police Department describes itself in its statement of mission and values consistent with our feedback, including emphases on impartial, nondiscriminatory, and bias-free policing consistent with principles of procedural justice. Going forward, the Police Department might emphasize the importance of "investigating and correcting officer misconduct in order to ensure the highest levels of professionalism in policing" and "fostering a culture of peer-accountability within the Department."

Recommendations

The Subcommittee reached consensus on the following recommendations to the Select Board and to the Police Department, which are elaborated in more detail in this document:

1. That the Select Board institute a standing committee—what we have called the Police Commissioners Advisory Committee ("PCAC")—to strengthen the civilian oversight of the Police Department provided by the Select Board. As outlined in the PCAC charge included in the Appendix, the PCAC would be tasked with the following responsibilities: reviewing policing practices and policies on an ongoing basis; serving as a liaison with the public on police issues; and providing an additional layer of oversight of complaint investigations.
2. That the Select Board recommend to the Diversity Office that they create a Liaison position that would be available to assist complainants in filing complaints with the BPD and would also be able to handle some of the many responsibilities placed on the Diversity Office by various Town Meetings.
3. That the Select Board permit the Reforms Committee to continue its work to revise and update the complaint procedures by, among other changes: (a) providing additional intake options for complaints against police employees; allowing complaints to be filed online (this was a technology based change to the current Complaint procedures that was completed during the Committee's work); modifying data reporting requirements to increase transparency by providing to the public additional information about complaints, including discipline; strengthening and formalizing the mediation processes for less serious

complaints; and making other changes to increase the accessibility and readability of the complaints process.

4. That the Select Board, Police Department, Town IT, and Diversity Office approve a new survey procedure (akin to a customer satisfaction survey) for members of the public to provide feedback on civilian encounters. This would provide a more general way to obtain feedback from the public about the performance of the Police Department than relying solely on complaints and commendations, which is the current practice. We have provided an online survey form and associated procedures to pilot this suggestion; going forward, the Police Department might consider randomly sampling people who have encountered the Police Department and surveying them about their experiences.
5. That the PCAC work with the Police Department to implement new policies and procedures required by the Police Reform Law, including the requirement that “A law enforcement agency . . . develop and implement a policy and procedure for law enforcement personnel to report abuse by other law enforcement personnel without fear of retaliation or actual retaliation.”³⁰
6. That the Police Department’s stated mission and goals include more explicit commitments to promoting equitable services by combatting profiling and other forms of disparate treatment and to reflect “the right to bias-free professional policing” contained in the Police Reform Law.
7. That the Select Board not agree to or authorize any police contract provision that would limit the ability of the Town to impose discipline on officers for misconduct or that would impose onerous and non-transparent procedures before discipline could be imposed.³¹

³⁰ While the manual contains some relevant items—importantly, the use of force policy requires bystander intervention and the civilian complaints policy briefly mentions officers reporting peer misconduct—we have proposed some additions and modifications to strengthen these provisions. We applaud the Department’s recent adoption of EPIC/ABLE training of all personnel to promote bystander intervention by officers.

³¹ Brookline’s Police Union Contract is notable for not including provisions found in many police union contracts that hinder accountability for officer misconduct. For example, the Contract retains as a Management Right the ability to provide written reprimand, suspend, demote, discharge, or otherwise discipline officers for just cause, does not provide officers accused of misconduct with special protections such as interview delays, and does not expunge the complaint records of officers or prohibit the filing of anonymous complaints.

**Recommendation to the Select Board to Appoint a
POLICE COMMISSIONERS ADVISORY COMMITTEE**

The **Select Board Committee on Policing Reforms** recommends that the Select Board appoint a **Police Commissioners Advisory Committee** as a permanent standing Committee of the Select Board pursuant to the following Charge:

CHARGE

There is hereby established as a permanent standing committee of the Select Board a Police Commissioners Advisory Committee (hereinafter, the “Committee”) to (1) advise and assist the Select Board members in providing effective civilian oversight of the Brookline Police Department (hereinafter, “Police Department” or the “Department”) in their capacities as Police Commissioners under Massachusetts General Laws Chapter 41, §97 and Brookline Bylaws Section 3.1.2.A and to (2) serve as ombudspeople and public advocates on policing issues.

The purpose of the Committee shall be to assist the Select Board on an ongoing basis to improve policing services in Brookline and to foster a more inclusive, equitable, and effective Police Department and, in so doing, promote public trust and confidence in policing in Brookline. The Committee shall also function to support and encourage the Department and its officers and civilian employees in their provision of superior service to the community in alignment with the above purposes of the Committee.

The voting members of the Committee shall consist of five civilian residents of Brookline who collectively embody a breadth of lived and professional experience and expertise regarding policing and related issues, at least one a practicing lawyer. Voting members shall be appointed by the Select Board for staggered three-year terms. The Committee shall have a chair designated by the Select Board who is knowledgeable of public sector labor law, policing issues, and the due process protections of public employees.

The voting members must demonstrate an ability to make critical, independent, and fair judgments on the policies and practices of the Department. Voting members shall neither be a current employee of the Town nor an immediate family member of a current Department employee. To the extent practicable, membership shall have racial and economic diversity, including the perspectives of communities that have suffered from inequitable treatment by policing in America.

In addition to the voting members, there shall be five non-voting members. Four non-voting members shall be Town staff representing, respectively, the Office of Diversity, Inclusion, and Community Relations (hereinafter, the “Diversity Office”), the Human Resources Department, Town Counsel, and the Police Department. There shall also be

a non-voting member designated by the Brookline Police Union (the “Police Union”). The Diversity Office shall coordinate Town staff in assisting the Committee.

A quorum of the Committee shall be three voting members, but the Committee may act only by a vote of a majority of the five voting members of the Committee.

As soon as possible, the Committee shall adopt a written code of behavior and ethics for its members, subject to the approval of the Select Board, addressing issues including conflicts of interest, gifts and favors, integrity and objectivity, self-examination and self-development, and transparency subject to confidentiality of information as required by law or otherwise appropriate.

To the extent practicable, the Committee shall meet at least monthly or more often as necessary to achieve its goals. A public comment period shall be on the agenda of every regular meeting.

The Committee’s responsibilities shall include the following:

1. Working as appropriate with BPD’s Accreditation Coordinator, to study BPD policies, practices, and procedures, including to scrutinize both personnel/diversity-related funding and policies (including promotions), as well as its Mission, Values, goals, and accomplishments including in the annual Financial Plan; to formulate and advocate for equitable and effective policing policies by the Select Board; to advise them on police-related warrant articles; and to be a forum for the public to offer suggestions and concerns about police matters.
2. A full review of the BPD Policies Manual, including consideration of an integration of the below changes into the Civilian Complaint process, followed by better and more explicitly inserting language updating the Mission, Values, and in many places explicitly adding some non-exclusive factors to help guide discretionary decisions, including by discouraging unconscious bias and encouraging a welcoming atmosphere for diverse cultures and underprivileged people.
3. To hold, at least once a year, a well-publicized public hearing to present, scrutinize, and analyze the Police Department’s midyear and annual data regarding use of force, civilian complaints, traffic/pedestrian stops, policy changes, any pertinent survey data, and any other matters deemed material. The hearings shall be recorded, and a transcript shall be made that shall be posted to the Committee’s webpage.
4. To make recommendations to the Select Board on matters related to upcoming collective bargaining with the Police Union that impact fair and equitable policing and accountability. The foregoing is not intended to give the Committee or its members any special status in collective bargaining negotiations.
5. To (a) prepare the periodic assessment of the functioning of the police complaint procedures as required by the Civilian Complaint Policy (including, as appropriate, the

interaction between police complaint policies and other Town complaint policies) (b) prepare reports of the aforementioned public hearings and (c) make any appropriate recommendations to the Select Board based on both at a Select Board meeting following the completion of the assessment and report.

6. The Committee and/or a designated employee of the Diversity Office (the “Liaison”) (hereinafter, “Committee” shall include, where appropriate, such Liaison) shall play an active and ongoing role in monitoring and providing input into civilian and other complaint cases, including, without limitation, the following responsibilities:
 - i. Receive complaints directly from members of the public either via an email address monitored by the Liaison or in-person at the Diversity Office and promptly transmit them to the Police Department’s Office of Professional Responsibility (hereinafter, the “OPR”) and Select Board along with any observations or recommendations on issues including but not limited to the class designation(s) of the complaint in accordance with the complaint procedure.
 - ii. The Liaison may (a) assist the complainant to the extent the latter permits throughout the life of the complaint, including from intake to any appeal; (b) attend the complainant’s and all witness interviews, (c) be permitted to ask some follow up questions at them, (d) review all pertinent tapes or documentary evidence, and (e) discuss with OPR all factual and disposition opinions (including as to credibility), with the option of dissenting or adding other comments — all as stated in the soon-revised Civilian Complaint Policy.
 - iii. Refer, as appropriate after consultation with the Human Resources Department, complaints to the Human Resources Department for review under the Town’s Discrimination, Retaliation, and Harassment policy.³²
 - iv. Institute, maintain, and review systems for informing the public about methods for submitting complaints or commendations about police officers’ actions.
 - v. Institute and maintain a system to receive feedback from complainants or persons submitting commendations; analyze such feedback; and report findings to the Select Board when appropriate.
 - vi. After the Police Chief’s review and report, review the investigatory reports of the OPR on all complaints (civilian-initiated or otherwise) against police officers and any reports of the Liaison. The review shall include, but is not limited to, evaluations of the following items: the classification of the complaint, timeliness of the investigation, completeness of the investigation (including documentation of all relevant records), interviews of any witnesses, and weighing of evidence.
 - vii. After such review, the Committee may (a) adopt the conclusions and findings of the report, (b) refer the report back to the OPR for further consideration of specific concerns; if the OPR disagrees with the cited concerns, the OPR and

³² There is some ambiguity as to how different Town complaints processes interface with one another. The PCAC will need to work with Town staff to determine and codify the criteria and processes for appropriately directing complainants,

the Committee shall report their respective views to the Select Board, (c) in an allegation of serious misconduct (especially an allegation of a civil rights violation, corruption, excessive force, false arrest, or unlawful detention), the Committee should make a recommendation to the Select Board on whether the Select Board should retain an external investigator to supplement the OPR investigation; and/or (d) not adopt the report and report any and all of the respective views to the Select Board, including as to any possible appeal, as follows below:

- viii. In the case of a civilian complaint, the Liaison shall explain to the complainant the appeal process and assist in the submission of an appeal to the Select Board pursuant to the Civilian Complaint Policy provided the complainant desires to appeal; if the complainant declines to appeal, the Committee shall submit to the Select Board the Committee's reasons for not adopting the report and the OPR shall submit its report to the Select Board. After the Committee submits all reports to the Select Board pursuant to the foregoing, the Chair of the Select Board shall review them and consult with the Town Administrator on what actions, if any, the Select Board should consider pursuant to the Civilian Complaint Policy and present any options to the Select Board in executive session, if permitted by the Open Meeting Law.
 - ix. In an appropriate case as stipulated in the Complaints Policy, a member of the Committee may serve as a mediator for a complainant and the employee or officer who is the subject of the complaint.
 - x. In the absence of a designated Liaison from the Diversity Office to assist complainants, the Committee shall establish a procedure by which each complaint will be received and reviewed by a single Committee member, or by another alternative the Committee shall soon discuss and enact such a Human Resources employee, who shall assist the complainant and not be involved in any further action on that complaint other than reporting their findings to the full Committee.
8. The Committee shall work with the Police Department's Training officer to review and understand the Police Department's training programs and, if necessary, consult with outside experts, for the purpose of making recommendations to the Select Board to improve and make more effective the training of police officers.
9. Members of the Committee, with the approval of the Select Board, may attend training sessions for police officers that are relevant to the Committee's work in order to better understand the training, provided that civilians are permitted to attend, and that, in the opinion of the Police Chief or the Department's Training officer, the presence of Committee members will not disrupt or detract from the nature or purpose of the training.
10. The Committee shall conduct periodic confidential interviews and/or surveys of officers and civilian employees of the Police Department who volunteer to describe their experiences and offer suggestions for improving the Police Department. The

Committee shall include in its reports to the Select Board any recommendations based on such research.

11. The Committee shall annually review its work over the past year and report to the Select Board on such review, which report shall include any recommended changes, additions, or deletions to this Charge.

EXPLANATION³³

The Final Report of President Obama's Task Force on 21st Century Policing notes that "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community" (26). Under Massachusetts General Laws Chapter 41, §97, the Select Board is empowered to "make suitable regulations governing the police department and the officers thereof."³⁴ Brookline General Bylaw Section 3.1.2.A has formalized the Select Board's civilian oversight role by giving members the title "Police Commissioners." In principle, Brookline has a very strong version of civilian oversight: five directly elected civilians in the Select Board have broad powers, including the final authority to hire, fire, promote, and suspend police personnel and implement police policies. In practice, however, the Select Board has seldom exercised the full range of its civilian oversight powers with myriad other responsibilities competing for its attention.

To strengthen the Select Board members in carrying out their responsibilities as Police Commissioners in providing effective civilian oversight over the Police Department, we recommend a standing committee of civilians tasked with providing ongoing monitoring and input into police policies, acting as liaison between the public and the police, and providing independent review of internal complaints investigations. This group would be called the Police Commissioners Advisory Committee (PCAC). The PCAC combines a reactive "review" model of civilian oversight (monitoring complaints of police misconduct) with a proactive "auditing" of police policies and procedures.

The current civilian complaints process engages with the Select Board in three ways. First, the Select Board is the body which hears and reviews *de novo* those complaints that civilians or officers appeal for further consideration once presented to them by the

³³ Some PCR members are inclined to propose this Committee to begin as soon as possible to begin implementing proposed reforms, especially to the Civilian Complaints Policy. At least one PCR member seeks to codify the PCAC as a brief By-Law after the Police Commissioner By-Law.

³⁴ There are two versions of the MA General Laws regarding the establishment of Police Departments (§97 and §97A). In 1921, Brookline adopted §97, which gives less authority to the police chief and more authority to the Select Board, and reads in part as follows: "In towns which accept this section ... there shall be a police department established under the direction of the Selectmen, who shall appoint a chief of police and such other police officers as they deem necessary, and fix their compensation ... and the Selectmen may remove such chief or other officers for cause ... The Selectmen may make suitable regulations governing the police department and the officers thereof..." See also *Chief of Police v. Westford*, 365 Mass. 526, 530-31 (1974) ("[T]he primary control of the police department is in the chief of police under §97A and in the Selectmen under §97. ... [T]he Legislature ... has given towns the alternatives of a 'strong' chief, a 'weak' chief, or no chief at all...")

Town Administrator. Second, the Select Board with consultation of the Police Chief appoints two civilians to perform a biennial assessment of the complaints process. Third, the Select Board is tasked with ensuring the creation of a plan to educate the public about the civilian complaints process.

In each of these roles, the Select Board's performance would be enhanced by the creation of the PCAC. The Select Board has not always heard appeals that were filed, as noted by the 2017 review of the complaints policy; the investigation of one complaint was appealed by both the civilian and the officer involved, but the Select Board did not schedule a hearing on either appeals. The biennial assessment of the complaints process has only happened twice since 2009.³⁵ The 2017 review was presented to the Select Board on June 4, 2019 and accepted by the Select Board on October 15, 2019 but the recommendations to revise the Complaint Policy were never voted by the Select Board.³⁶ Regarding public education, it is not clear what actions the Select Board has taken to carry out public education on the complaints process, though the 2017 report mentions some ways to improve this process. The PCAC members could assist the busy Select Board in carrying out these responsibilities – as well as reviewing police practices more generally – in the same way that various other advisory boards assist and report to the Select Board (e.g. the Housing Advisory Board, Economic Development Advisory Board, and Building Commission). While the Select Board maintains formal policymaking authority, it tends to defer to its dedicated appointees.

Moreover, the PCAC would provide an additional layer of scrutiny to the internal investigations of complaints, providing a “check and balance” on the complaint process. The PCAC would be empowered to review all internal investigations *while they are live* (unlike some other communities, where civilian oversight boards only access the internal investigations after those investigations have been closed). If a majority of PCAC members find an investigation to be deficient, it can refer the complaint back to the IAO for further work; if that is insufficient, the PCAC can recommend that the Select Board take additional action to resolve the complaint, such as hiring an external investigator. The PCAC is also charged with referring suitable complaints to the Human Resources Department for investigation under its Harassment, Discrimination, and Retaliation complaint policy, though how these processes interface with one another is ambiguous and requires some sorting out by the PCAC and Departments.

³⁵ The delay was explained as follows in the Select Board minutes for June 4, 2019: “Lt. Campbell responded that there were a number of circumstances causing the delay, former Chief O’Leary took a [medical] leave of absence; I was on leave of absence and the difficulty in getting people to assist in the process, hopefully we will keep this on track.” The review period for both periodic assessments was extended to include all prior cases and years that had not yet been studied.

³⁶ The 2017 review was presented to the Select Board on June 4, 2019 by Bobbie Knable and Kelly Race. Objections to the scope of the review and its methodology were raised by a Select Board member. Because scope and methodology was defined by the terms of the periodic assessment required by the policy, the Chair of the Select Board suggested that they take further comments and revise the policy, including the section requiring a periodic assessment in order to better define the proper scope of the review. On October 15, 2019 the Select Board voted 4-1 to accept the Knable/Race review of the complaint process. The Complaint Policy was not voted. The Policing Reforms Committee’s Subcommittee on Accountability took up the review and revision of the Complaint Policy. Its recommendations will be part of the Committee’s recommendations to the Select Board.

This proposal does not, however, displace the investigation of police complaints from the Police Department by shifting investigations to an external agency. There are two immediate reasons for this. First, Town Counsel advised us that moving the investigation of complaints outside the Police Department would require collective bargaining with the Police Union – it would remove work from the bargaining unit and might constitute a substantial change in working conditions for police employees. As a result, such a change can only be implemented when the Police Union contract is renegotiated. Second, the relatively low volume of complaints (2 in 2020, 8 in 2019, 2 in 2018, and 2 in 2017) makes it difficult to justify the expense of hiring an external investigator, as civil rights attorney Howard Friedman told us. There are also some substantive reasons for keeping this function in the Police Department. Some scholars, such as Northeastern University Professor Jack McDevitt in his discussion with us, suggest that eliminating the adjudication of complaints from the Police Department hinders accountability by letting the Department off the hook for correcting misconduct. “Without responsibility to adjudicate wrongdoing and impose discipline, ... senior executives in the law enforcement agency cannot be held personally accountable for dealing with police misconduct...”³⁷

Importantly, the PCAC’s responsibilities are not limited to reactively monitoring complaints. The group would also, on an ongoing basis, review and audit the formal and informal police department policies and practices and recommend changes to those policies for the Select Board (as Police Commissioners) to implement; assist the Select Board in determining collective bargaining priorities with the Police Union (including, as desired, replacing the investigation of police complaints with an external investigator); hold regular public hearings to hear from the public about police issues and to present information about stops, arrests, complaints, and other data pertinent to the Police Department; study police training practices; and interview Police Department employees to hear about their concerns and suggestions for improvement. To effectively carry out these functions, the PCAC would be assisted by non-voting representatives from Town Counsel, the Office of Diversity, Human Resources Department, and the Police Department. There would also be a non-voting Police Union representative.

The PCAC attempts to achieve civilian oversight that is tailored to Brookline by leveraging its strong tradition of volunteerism to make its Town structure work effectively. The Select Board has ample legal authority to oversee the Police Department, but it lacks the skills, expertise, and dedication of volunteers that would give life to these powers.

³⁷ Bobb, Merrick. "Civilian oversight of the police in the United States." St. Louis U. Pub. L. Rev. 22 (2003): 151.

Subcommittee on Civil Rights, Military Equipment, and Mass Events

Outline of Contents

- I. Introduction
- II. Officer Racial Profiling - traffic stops, field interrogations, and arrests
- III. Civilian Racial Profiling - suspicious person calls
- IV. Mutual Aid Agreements and Command and Control Procedures for Mass Events, Demonstrations, etc., Including Specialized Units
- V. Arrests and Use of Diversion
- VI. No-Knock Warrants

Recommendations

Supporting Documents and Materials in Appendix C to the Report

1. Introduction.

The members of the subcommittee are Paul Yee, Chair, Bernard Greene, Casey Hatchett, Martin Rosenthal and Non-voting member: Retired (1995-2018) Brookline Police Chief Daniel O'Leary

The Civil Rights, Military Equipment and Mass Events Subcommittee is one of five subcommittees of the Select Board's Committee on Policing Reforms and is charged with the following, in each instance proposing either specific reforms or issues needing further reform by the proposed Police Commissioners Advisory Committee (hereinafter "PCAC")

A. Officer Racial Profiling

- 1. Define racial profiling/disparities in the Brookline context;
- 2. Examine data to determine the extent of racial profiling/disparities in traffic stops, field interrogations, and arrests;
- 3. Examine current supervisory procedures that monitor for racial profiling/disparities and recommend procedures to reduce its incidence.

B. Civilian Racial Profiling.

- 1. Examine data on civilian calls to determine incidence of calls based on racial bias by the caller - e.g., suspicious person calls;
- 2. Recommend dispatcher practices that control the negative impact of such calls.

- C. Examine the report of the Town's Surveillance Technology Military Type Study Committee as it relates to military equipment acquired and utilized by the BPD³⁸
- D. Review mutual aid agreements and command and control procedures for mass events, demonstrations, etc. including BPD's specialized units
- E. Review and examine arrests and use of diversion
- F. Review and examine the Brookline Police Department use of no knock warrants

This Subcommittee met seven times. The subcommittee reviewed public information available on the Town of Brookline Police Department website.

The website contains information such as Annual Reports with crime statistics and analysis, the Manual with the Policies and Procedures, Rules and Regulations last revised by the Select Board in 2017, Year End Racial Disparities Report, and Year End Race and Gender Reports. The subcommittee also received information and data from the BPD through Retired Chief O'Leary and Sgt. Casey Hatchett and other members of the Select Board's Committee on Policing Reforms, as well as presentations and data provided at the meetings of the Task Force to Reimagine Policing³⁹. Some of the key information and data that the subcommittee looked at and relied upon are attached as Appendix C.

The subcommittee, and indeed the full PRC, takes very seriously the issue of profiling (as defined *infra*), which is at odds with our community's values, and which the BPD has taken seriously now for four decades, and which is endemic in American communities. While we may never be able to entirely eliminate unconscious bias, we need to keep striving to keep reducing its impact here, especially when such an effort would increase community support for the BPD and improve public safety. Every single incident when a person of color is inappropriately confronted, stopped, questioned, cited, searched, or arrested is not just a serious affront to that person, but an affront to the Brookline community. And, to the extent such incidents tarnish Brookline's image to those who might otherwise want to come or live here, our community suffers. BPD has been making serious efforts to reduce disparate treatment since 1987, especially since 1997 under Chief O'Leary. Yet, we still have some disparities, and need to keep improving those efforts.

The landscape of police reform has been and will be changing with "An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth" [Chapter. 253 of the Acts of 2020 (hereinafter the "Police Reform Law")] signed by Governor Baker on December 31, 2020. Portions of the Police Reform Law will take effect in normal course after ninety days; and some portions will take effect on July 1, September 1 and December 1, 2021. Some provisions of the 2020 Act will require promulgation of rules and regulations in the Code of Massachusetts Regulations (CMR)

³⁸ That report was reviewed, and suggested comments and recommendations were provided to the Surveillance Committee to be incorporated in that report.

³⁹ The data presented in this report is current to year end 2020, at the time when this report was written in February 2021.

by various state agencies, whether new or existing⁴⁰. The Police Reform Law also authorizes studies and commissions to consider additional legislation in the future.

Members of this Subcommittee contributed to the report, and others wrote reports which are also attached.

II. OFFICER RACIAL PROFILING

In Massachusetts racial profiling has been defined as "the practice of detaining [or stopping] a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." Racial profiling "is generally understood to mean the improper use of race as a basis for taking law enforcement action." In the context of traffic enforcement, officers who engage in racial profiling "utilize impermissible racial classifications in determining [which motorists] to stop, detain, and search.

Pretextual stops have also been declared illegal. "Of course, a traffic stop motivated by race is unconstitutional, even if the officer also was motivated by the legitimate purpose of enforcing the traffic laws."⁴¹ However, as discussed in Long, most state appellate courts and the Supreme Court have declined to adopt the proposition of suppression of evidence -- the primary deterrent or sanction for pretextual stops, so long as a traffic violation and stop is proven to be objectively reasonable under the federal or state constitutions. See also Santana, infra, as well as Whren v. United States, 517 U.S. 806, 813 (1996). Thus, the illegality of pretextual stops would be viewed as largely a "right without a remedy."⁴²

Further, the Police Reform Law prohibits racial profiling by adding Section 63(h) of Chapter 90: "A law enforcement agency, as defined in section 1 of chapter 6E, shall not engage in racial or other profiling." "For the purposes of this subsection, "racial or other profiling" shall mean differential treatment by a law enforcement officer based on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, religion, gender, gender identity or sexual orientation in conducting a law enforcement

⁴⁰ It will be necessary for the Select Board, assisted soon as we urge, by the new PCAC, to review and adopt many revisions to the Manual to be consistent and compliant with the 2020 Act and any promulgated regulations, as well as many of our general recommendations

⁴¹ Commonwealth v. Long, 485 Mass. 711, ___ (2020) (loosening somewhat the hurdles for obtaining and then using statistics to raise a prima facie suggestion of impermissible profiling) .

⁴² See in Long the concurring opinion of (since elevated to Chief) Justice BUDD (concurring, with Lenk, J.): In the twenty-five years since deciding Santana, the court has not examined the art. 14 implications of the pretextual stops that are legitimized by the authorization test. Given the opportunity to broaden the options available to combat racial profiling, it is disappointing that the court is willing to stand behind a rule that allows for pretextual stops without considering whether, and how, such stops are reasonable from an art. 14 standpoint. See Amado, 474 Mass. at 151 n.4 (pretextual stops, "though lawful under our current jurisprudence, implicate important policy concerns about racial profiling in encounters between the police and persons of color"); Lora, 451 Mass. at 447 (Ireland, J., concurring), quoting Feyenord, 445 Mass. at 87 (Greaney, J., concurring) ("I repeat the observation of Justice Greaney that poorer citizens, who likely would include minorities, are more likely to be 'driving vehicles with defective equipment,' thus providing police with a legitimate reason to exercise discretion to stop them").

action, whether intentional or evidenced by statistically-significant data showing disparate treatment; provided, however, that “racial or other profiling” shall not include the use of such characteristics, in combination with other factors, to apprehend a specific suspect based on a description that is individualized, timely and reliable.’

The Police Reform Law also declares: “All persons shall have the right to bias-free professional policing.”⁴³ “Bias-free policing”, is defined⁴⁴ as “policing decisions made by and conduct of law enforcement officers that shall not consider a person’s race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level. This definition shall include policing decisions made by or conduct of law enforcement officers that: (1) are based on a law enforcement purpose or reason which is non-discriminatory, or which justifies different treatment; or (2) consider a person’s race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level because such factors are an element of a crime.”

REVIEW OF POLICIES AND DATA

A. TRAFFIC STOPS

1. POLICIES FOR TRAFFIC ENFORCEMENT

The stop data should be reviewed in context of the policies, rules and regulations under which the BPD operates, and what the officers follow in carrying out their traffic enforcement. The BPD Manual in Section 3 under Traffic Enforcement/Investigation/Control (General Order Number: 26.1) provides guidance and specifics for traffic enforcement. “The ultimate objective of enforcement is to favorably alter the violator’s future driving behavior, thus fostering a climate of safe driving throughout the community.” “To ensure maximum reduction of accidents, enforcement pressure should be applied in proportion to the needs of the locations, and at the hours of greatest accident expectancy. Traffic laws will be enforced at a level sufficient to ensure the safe and expeditious movement of traffic.”⁴⁵

The Manual explains how the BPD deploys traffic enforcement: “The deployment of patrol and traffic unit personnel will be based on an analysis of traffic accidents and traffic-related services.” “Assignment of traffic enforcement personnel will be based on

⁴³ Section 37 of the Act amends chapter 12 of the General Laws section 11H of which section 11H(b) is a part.

⁴⁴ Section 30 of Ch. 253 of the Acts of 2020 inserted an entire new chapter 6E to establish the new Massachusetts Peace Officer Standards and Training Commission (hereinafter “POST”) . Section 1 has the definition of “bias-free policing”.

⁴⁵ Lack of sufficient traffic enforcement may, also, subject the Town to civil liability under some circumstances. See Irwin v. Town of Ware, 392 Mass.745, 759 (1984)(a municipality may be liable for personal injuries to a member of the public in case of a police officer’s failure to remove a drunk driver from the roadway, since “there are statutes requiring police officers to act. A police officer must, at least, issue a record upon a citation for each automobile law violation. G. L. c. 90C, Section 2.”

principles of selective enforcement. Resources will be directed toward specific violations, in specific locations. Enforcement efforts shall be evaluated to ensure that enforcement action is reducing accidents”⁴⁶

The Manual generally tells officers how to conduct a motor vehicle stop⁴⁷ and interact with a motorist, necessarily including use of discretion after the stop to give a verbal warning, written warning, or citation according to the criteria in the Manual.

The Manual provides specific guidance when a verbal warning may be appropriate where the driver may be ignorant or unaware of the situation. The Manual provides the officer with two examples but cautions a written warning is preferable. The officer must fill out a Traffic Contact Form in case of a verbal warning.

One instance for a verbal warning is a rolling stop at a stop sign where there is no safety issue, and the violator was unaware such a rolling stop is not permitted in Massachusetts. Another example is defective equipment such as an unlit license plate, where the violator may be unaware of it. Another example occurs when the violator commits an act, which may be due to ignorance of a particular law.

Written warnings are appropriate for minor infractions where the infraction is not egregious, and education of the driver would be preferable, according to the Manual. The Manual cautions against “the excessive use of warnings”, “since it could create a feeling of lack of commitment by the police department to enforce motor vehicle safety within the community.”

The Manual provides specific criteria for the use of discretion to issue a citation. “An officer's discretion plays a big part in the decision to take punitive action against a violator. However, this discretion should be based on a combination of experience, training, and common sense. The traffic citation should be issued to all violators who jeopardize the safe and efficient flow of vehicular and pedestrian traffic, including hazardous moving violations, multiple violations (multiple violations consist of infractions listed on the same citation), violations of new laws and/or regulations, and operating unsafe and/or improperly equipped vehicles.”

In case of certain motor vehicle laws such as driving after license revocation or suspension, the law gives the officer the power to arrest the driver and requires an officer to arrest i.e. after license suspension for drunk driving. The Manual also sets forth criteria for the use of discretion where arrest is not statutorily mandated.

⁴⁶ Some selectivity or discretion in enforcement of the law is permissible, as long as it is not based on some unjustifiable classification like race. Commonwealth v. Long, *supra*.

⁴⁷ “It is well established that where the police have observed a traffic or motor vehicle law violation, they may pull over the automobile. Commonwealth v. Santana, 420 Mass. 205, 207 (1995). “[P]robable cause is the proper standard to justify the issuance of a citation or warning for a violation of the seat belt law, G.L. c. 90, § 13A”, since “issuance of a citation is more like an arrest than it is like an investigatory traffic stop”. Commonwealth v. Washington, 459 Mass. 32, 38-30 (2011).

The officer is provided with discretion in offenses relating to license revocation or suspension to issue a criminal citation or summons instead of making an arrest. An example within the criteria in the Manual would be young children traveling with the driver. Such discretion lessens the impact on a driver especially where the reason for license loss or revocation may be economically based i.e. failure to pay parking tickets or court defaults for failure to pay court fees or fines.

The Manual directs the officers not to give preference to local residents or non-residents but to be consistent and uniform in traffic enforcement⁴⁸. In the Civil Rights section of the Manual, discriminatory enforcement is prohibited: “No officer shall conduct a traffic stop, field interview, asset forfeiture, or seizure of any person when such action is based solely on that person’s race, ethnicity, age, gender identity, sexual orientation, religion, economic status, cultural group, or other identifiable group affiliation.”

2. TRAFFIC STOP DATA

The available traffic stop data with the most detail were from 2018 through 2020. For enforcement data, in 2018, the Brookline Police Department issued 9,271 moving violations, and in 2019 13,745 moving violations⁴⁹. In 2020, as a direct result of COVID and the extended period of lockdown, significantly less moving violations were issued (with 3,400 issued, which is down 75% from 2019).

The chart below is a compilation of the types of traffic stops by violation type, which totaled over 100⁵⁰ for 2018 & 2019. In the chart, the moving violations are added together first and then the nonmoving violations next. Stops for violations totaling less than 100 are not on this summary.

⁴⁸ See Manual, Traffic Enforcement, p.6.

⁴⁹ 2019 Annual Report p.16-17. According to the Annual Report, the increase in the number of violations in 2019 is due to BPD’s addition of a new class of officers.

⁵⁰ Appendix 1.

Over 100 Violations	2018	% of violations	2019	% of violations
failure to stop at intersection/flashing red light (c. 89-9)	3900	45.79%	5022	38.53%
failure to take precaution for other on road e.g. school bus, trolley or bicyclist (c. 90-14)	1393	16.36%	1601	12.28%
turning on red signal, right-of.way at intersecting ways (c. 89-8)	801	9.40%	974	7.47%
speeding (c. 90-17)	514	6.03%	1087	8.34%
texting while driving (c. 90-13B)	0	0	1058	8.12%
Brookline special speed limit (c. 90-18)	461	5.41%	833	6.39%
failure to keep in single lane (c. 89-4A)	426	5.00%	516	3.96%
using device to interfere with proper driving (c. 90-13)	0	0.00%	468	3.59%
failure to yield to pedestrian in crosswalk (c. 89-11)	204	2.40%	231	1.77%
subtotal	7699	90.40%	11790	90.46%
inspection sticker (c. 90-20)	439	5.15%	603	4.63%
equipment violation (c. 90-7)	379	4.45%	505	3.87%
unreg (c. 90-9)	0		135	1.04%
subtotal	818	9.60%	1243	9.54%
TOTAL	8517		13033	

Summary of violations cited over 100 times by BPD from Traffic Division Offenses by Race-Disposition for 2018 and 2019 spreadsheet.

For the 2018 and 2019 violations issued for defective equipment under M.G.L. c. 90 §7, the BPD provided racial background data. The data show that over 90% of all drivers were usually issued a warning, More White drivers were stopped than Black, Asian/Pacific Islander, Middleeastern/East Indian, and Spanish/Latino.

2018						
90-7/DEFECTIVE EQUIP	Arrest	Civil Infraction	Criminal Application/Court	Void	Warning	TOTAL
Asian/Pacific Islander		2			29	31
Black	2	5	2	1	98	108
Middleeastern/East Indian		1			35	36
Spanish/Latino	1	2	1		40	44
Unknown		1			4	5
White	2	6			188	196
TOTAL	5	17	3	1	394	420
2018						
90-7/DEFECTIVE EQUIP	Arrest	Civil Infraction	Criminal Application/Court	Void	Warning	TOTAL
Asian/Pacific Islander	0.00%	6.45%	0.00%		93.55%	31
Black	1.85%	4.63%	1.85%		90.74%	108
Middleeastern/East Indian	0.00%	2.78%	0.00%		97.22%	36
Spanish/Latino	2.27%	4.55%	2.27%		90.91%	44
Unknown	0.00%	20.00%	0.00%		80.00%	5
White	1.02%	3.06%	0.00%		95.92%	196
TOTAL	1.19%	4.05%	0.71%		93.81%	420

2019					
90-7/DEFECTIVE EQUIP	Arrest	Civil Infraction	Criminal Application/Court	Warning	TOTAL
Asian/Pacific Islander	1	3		47	50
Black	3	3	4	147	157
Middleeastern/East Indian	1	2		35	38
Spanish/Latino		4	3	64	71
Unknown				3	4
White		6	2	231	239
TOTAL	5	18	9	527	559
2019					
90-7/DEFECTIVE EQUIP	Arrest	Civil Infraction	Criminal Application/Court	Warning	TOTAL
Asian/Pacific Islander	2.00%	6.00%	0.00%	94.00%	50
Black	1.91%	1.91%	2.55%	93.63%	157
Middleeastern/East Indian	2.63%	5.26%	0.00%	92.11%	38
Spanish/Latino	0.00%	5.63%	4.23%	90.14%	71
Unknown	0.00%	0.00%	0.00%	75.00%	4
White	0.00%	2.51%	0.84%	96.65%	239
TOTAL	0.89%	3.22%	1.61%	94.28%	559

Summary of defective equipment violation only cited over 100 times by BPD from Traffic Division Offenses by Race-Disposition for 2018 and 2019 spreadsheet.

The BPD produced 2018 and 2019 data relating to the citations issued related to the locations where motor vehicle accidents with other motorists, pedestrians or bicyclists occurred⁵¹. The 2018 data showed the concentration of enforcement where numerous motor vehicle accidents with other motorists, pedestrians or bicyclists occurred.

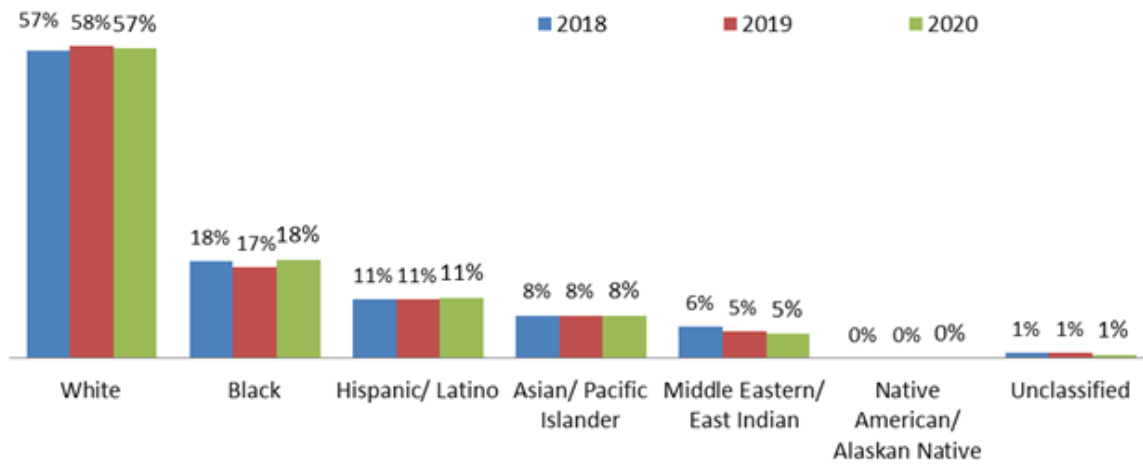
According to the 2019 Year End Review, there were 1,270 traffic crashes. The 2019 data showed the locations with the most accidents and the large number of traffic citations issued in those areas.

These comparisons appear to show the BPD is applying the principles of intelligent traffic enforcement, focusing efforts where it is needed according to the policies, rules and regulations set forth in the Manual.

Next, the racial background of the stopped drivers for 2018 through 2020 remain somewhat constant: 57-58% for White, 18-17% for Black, 11% for Hispanic/Latino, 8% for Asian Pacific Islander, 6-5% for Middle Eastern/East Indian and 0% for Native American/Alaskan Native, The respective percentages of the racial composition of the drivers in 2017 were similar.

⁵¹ See Appendix 5-16.

Moving Violations By Race - 3 Year Comparison



3 Year Comparison by Race by BPD from 2019 Year End Review, p. 17.

In 2020, there were 3,400 traffic stops with the following racial composition.

2020 Moving Violations/Citations			
Race		Gender	
White	1,953	Male	2013
Black	621	Female	1,374
Hispanic/Latino	380	Unidentified	13
Asian/ Pacific Islander	268		
Middle Eastern/ East Indian	155		
Native American/Alaskan Native	0		
Unclassified	23		
Total:	3,400	Total:	3,400

2020 moving violation data with racial background by BPD.

Of the motorists issued moving violations in 2020, 57.44% were identified as White, 18.26% were identified as Black, 7.88% were identified as Asian/Pacific Islander, 11.18% were identified as Hispanic/Latino, 4.56% were identified as Middle Eastern/East Indian, and none were identified as Native American/Alaskan Native. These percentages were consistent with the prior years (2017, 2018 and 2019).

Recent BPD Citations for 2020 showed that 86% of the drivers cited were nonresidents, and only about 14% were residents⁵².

Brookline Resident	Arrest	Civil Infraction	Criminal Application/Court	Void	Warning	Grand Total
No	22	461	35	5	2,392	2,915
Unknown				3	1	4
Yes	1	66	5	2	407	481
Grand Total	23	527	40	10	2,800	3,400
Brookline Resident	Arrest	Civil Infraction	Criminal Application/Court	Void	Warning	Grand Total
No	0.75%	15.81%	1.20%	0.17%	82.06%	2,915
Unknown	0.00%	0.00%	0.00%	75.00%	25.00%	4
Yes	0.21%	13.72%	1.04%	0.42%	84.62%	481
Grand Total	0.68%	15.50%	1.18%	0.29%	82.35%	3,400

Citations by Residency by BPD for 2020

⁵²Prior to 2020, the racial breakdown of nonresidents and residents for traffic stops were not captured unlike field interrogations and arrests.

Non-Brookline Resident	Total	Arrest	Civil Infraction	Criminal Application/Court	Void	Warning
Asian/Pacific Islander	204		32	4		168
Black	606	14	99	9	4	480
Middleeastern/East Indian	130		20	2		108
Spanish/Latino	368	4	77	6		281
Unknown	18		2	2		14
White	1,589	4	231	12	1	1,341
Total	2,915	22	461	35	5	2,392
Brookline Resident	Total	Arrest	Civil Infraction	Criminal Application/Court	Void	Warning
Asian/Pacific Islander	64		12	2	1	49
Black	15					15
Middleeastern/East Indian	25		7			18
Spanish/Latino	11		3			8
Unknown	2					2
White	364	1	44	3	1	315
Total	481	1	66	5	2	407

Citation Disposition By Race Residence by BPD for 2020

The racial background of the non resident motorists issued citations in 2020 was as follows: 54.5% were White, 20.8% were Black, 7% were Asian/Pacific Islander, 12.6% were Spanish/Latino, and 4.5% were Middle Eastern/East Indian. The racial background of the resident motorists was as follows: 75.7% were White, 3.1% were Black, 13.3% were Asian/Pacific Islander, 2.3% were Spanish/Latino, and 5.2% were Middle Eastern/East Indian.

Next, the statistical approach to review the data is by comparing (1) information about how the statute was enforced against other drivers of the defendant's race by the officers or department in question, often involving numbers of stops, citations, and FIOs for drivers of specific races (enforcement data); and (2) statistical data that estimate the demographic distribution of drivers on the roads in the area of the stop ("benchmark" data). The two are then compared, under the assumption that, absent impermissible discrimination, the enforcement rates should reflect the demographic composition of all drivers.⁵³

⁵³ Commonwealth v. Long, supra.

The racial composition of Brookline's resident population is not the same as the driver population which may be subjected to a traffic stop. A benchmark is needed to compare the percentage of Black versus White stops to the relevant percentages of such drivers coming through Brookline along the routes where stops are occurring. The Brookline Transportation Department's traffic mapping showed Brookline as a regional entry/exit point during the morning and evening commute time. Drivers are going through Brookline from and to surrounding communities of Allston/Brighton, Cambridge, Newton, West Roxbury, Boston, Roxbury and Mission Hill which would have different racial demographics. The Transportation Department reports the average daily peak volume for 2019 was 26,024 (61%) entering via Newton per day and 16,618 (39%) entering via Boston per day.

The BPD data, however, shows in 2019, about twenty-two percent (22%) of the traffic stops occurred between midnight and 2 am.⁵⁴ Midnight to 1 am time period accounts for 14% or 841 of the stops, while the hours between 1 am to 2 am account for 8% or 441 of the stops in Brookline. The remaining 78% of the traffic stops are spread over the time period between 2 am to 11 pm. The BPD does not have readily available data on the racial background of drivers by the time of day stopped. As a result, the Brookline Transportation Department's data based on commute time traffic, is not based on the time periods, when the BPD is actually conducting traffic enforcement. Any guess-estimate of the driver population based on the two periods of commute time would be inaccurate and should not be used as a proxy for benchmarking in data comparison.

There is no agreement on the most accurate benchmark data to determine the estimate for the racial composition of drivers on the roads in an area; but it is certain that the Transportation Department's data, while appreciated as the only recent data, simply has

⁵⁴ Traffic stop breakdown by day of the week and time for 2019 by BPD's computer aided dispatch (CAD) system. Officers notified dispatch that they are called off on traffic stops 5871 times (which is a little less than half of all stops). These figures do not include all of the stops. Appendix 16A (2019) similar to 2018 in Appendix 16B. These percentages are an indirect indication of the number of traffic stops at night.

not the accuracy we really need for this crucial issue.⁵⁵ The authors of the Massachusetts Traffic Stop Benchmark Analysis (2008)⁵⁶ -- hereinafter "Benchmark Analysis (2008)" -- recommend "using multiple benchmarks as part of an ongoing practice of monitoring the racial demographics of traffic enforcement and sharing these analyses with the community" -- and then used one of the two most accepted methods, drivers' ethnic data from car crash/accidents reports.

"Researchers have tried using census data and modified census data but these measures tend to only reflect the demographics of people who live in a community not necessarily those who drive through a community." In some communities, the census population is the least accurate measure of the driver population⁵⁷. Other than the car crash data, it may be that what's sometimes called a "windshield study, "[t]he best method appears to be having trained observers actually record drivers traveling through particular communities at various locations and times, however observations generally are expensive and time consuming to collect,"

The BPD has the aforementioned daytime observational driver population crash data from 2008 showing whether the races of drivers from traffic crash data were sufficiently similar to the races from roadway observations to be a proxy for driver population estimates ⁵⁸. The Brookline daytime observations⁵⁹ showed: 76.1% for White, 11.2% for Black, 4.1% for Hispanic/Latino, 6.6% for Asian Pacific Islander, 1.8% for Middle Eastern/East Indian.

⁵⁵ Pryor and Goff of the Center for Policing Equity, *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities*, VIII Analyzing the Data, p. 30-31 (2020).

⁵⁶ App. 17-77. In 2008, Brookline (by then Chief O'Leary) volunteered to be one of eight municipalities in a study by Prof. McDevitt who along with Amy Farrell had conducted a car crash/observational study, thus updating the benchmark numbers (the denominator) for profiling data.

⁵⁷ Benchmark Analysis (2008), p. i, See also the Lora decision supra.

⁵⁸ Benchmark Analysis (2008), which found the Brookline driving population estimates from the daytime observation and all time crash data from August 1, 2007 to March 30, 2008 were as follows: 76.1% for White, 5.9% for Black, 5.6% for Hispanic/Latino, 10% for Asian Pacific Islander, 2-4% for Middle Eastern/East Indian. The study found that for certain racial groups there were insufficient crash data to have a reliable driver population estimate.

⁵⁹ The observations were done in February through May 2008 from 8 am -6 pm. when the race and gender of the driver could be seen. There were no night time observations.

The racial background of the drivers stopped in the daytime and night time in Brookline for 2018 and 2019 were as follows: 57-58% for White, 18-17% for Black, 11% for Hispanic/Latino, 8% for Asian Pacific Islander, 6-5% for Middle Eastern/East Indian and 0% for Native American/Alaskan Native.

The 2008 driver population estimate from that study may no longer be accurate since there are a significant number of traffic stops at night and the possible increase in nonresident drivers, which may have influenced the final driver population estimate.

The BPD has not adopted any benchmark for comparison but has provided in the BPD reports demographic information for the neighboring communities which may affect the driver population estimates in Brookline.

2010 US Census Data:	Brookline	NU Brookline Windshield Study**	Boston	Cambridge	Newton
White	76.7%	74.3%	53.9%	66.6%	82.3%
Black	3.4%	11.3%	24.4%	11.7%	2.5%
American Indian/Alaskan Native	0.1%	n/a	0.4%	0.2%	0.1%
Asian	15.6%	7.3%	8.9%	15.1%	11.5%
Hispanic or Latino	5%	n/a	17.5%	7.6%	4.1%

** The windshield study was conducted in 2008 and was part of Northeastern University's "Massachusetts Traffic Stop Benchmark Pilot Analysis" to determine driving population.

Population census comparison for neighboring municipalities from 2018 Year End Racial Disparities Report.

Without an accurate benchmark which includes daytime and nighttime drivers to compare the Brookline enforcement data, it is difficult to draw any definitive conclusion about disparities. Without an accurate benchmark, it would be difficult to measure the effectiveness of any reform implemented.⁶⁰

⁶⁰ Pryor and Goff of the Center for Policing Equity, [Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities](#), VIII Analyzing the Data (2020). Professor McDevitt stated that data is necessary to monitor the presence of any unconscious bias, and the windshield survey might be the best benchmark for a driver population estimate.

The data does, however, show that the BPD is not using traffic stops for searching motorists, whether possibly pretextual or otherwise. “In 2019, there was one unknown instance in which a non-inventory motor vehicle search was conducted” according to the 2019 Year End Review. “In 2018 there were no non-inventory motor vehicle searches conducted” according to the 2018 Year End Review. In 2020, there were two instances in which a non-inventory motor vehicle search was conducted, constituting 0.06% of stops.

Nevertheless, there is supervision and accountability for the officers conducting traffic enforcement. The supervisors such as the sergeants review the performance of the individual officers at 6 month intervals through the Fair And Impartial Policing (FAIP) system for racial and/or gender disparities. Professor McDevitt endorsed the use of the Fair And Impartial Policing (FAIP) system. The FAIP is described in more detail in the report with that title, attached⁶¹. The PCAC should have more and periodic discussions with the BPD to monitor whether the FAIP should be improved/modified.

In looking at the data, the Subcommittee acknowledges that there is some level of disparate traffic enforcement taking place, whether that be racial or socio-economic; and to what extent we cannot determine without further study; however, we do agree that in order to keep trying to further reduce the level of disparity, the Department should continue to focus on: 1) recruitment and retention of good candidates, particularly candidates who are educated and diverse, 2) training, 3) supervisory oversight and intervention, if needed, and 4) review of the (600+ pages) Policy Manual relating to many (necessary) uses of officer discretion where more criteria for the exercise of discretion may need additional or more clarification.

B. FIELD INTERROGATIONS

⁶¹ App. 78-79.

The federal and the Massachusetts constitutions permit the police to stop, detain and pat frisk a person to investigate criminal activity based on reasonable suspicion as not being violative of the respective provisions against unreasonable search and seizure. Grasso & McEvoy, Suppression Matters Under Massachusetts Law Section 1.1-1.2 (2018 Ed.).

In addition, state law, M.G.L. c. 41, sec. 98, permits the police to investigate suspicious activity and detain a person. “They may examine all persons abroad whom they have reason to suspect of unlawful design, and may demand of them their business abroad and whither they are going”. “If a police officer stops a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If he finds such weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall return it, if lawfully possessed, or he shall arrest such person.”

The Manual in the section on Investigatory Stop and Frisk and Threshold Inquiry (General Order Number: 24.1) sets forth the policies and rules regulating investigatory stops and is detailed. “A police officer, in an appropriate manner and with a specific and articulable basis for suspicion that someone has, is or may engage in criminal behavior, may temporarily stop and briefly detain a person for the purpose of inquiring into possible criminal behavior even though the officer does not have probable cause to make a lawful arrest at that time. In addition, an officer may frisk such a person for weapons as a matter of self-protection when they reasonably believe that their own safety, or that of others nearby, is endangered. The purpose of this temporary detention for questioning is to enable the police officer to determine whether to make an arrest, whether to further investigate, or whether to take no police action at that time.” “The information on which the officer acts should be well founded and reasonable. A hunch or pure guesswork, or an officer's unsupported intuition, is NOT a sufficient basis.”

The Manual tells the officer when a pat frisk of a person is legally permissible: “If a police officer reasonably believes that their own safety or that of others is in danger, they may frisk or pat-down the person stopped and they may also search the area within that person's immediate control in order to discover and take control of any weapon that may be used to inflict injury.” The Manual describes in detail the procedure for the protective pat down. The Manual advises the officer the “frisk should not be a pretext to search for evidence of a crime”. Amongst other guidance, the pat down is limited to the outside of the clothing unless the officer feels an object which could reasonably be a weapon.

The above same legal standard for a pat frisk applies to the driver in a car except that the officer may then order the driver out of the car to do the pat down according to the Manual. The Manual permits the officer to make a limited inspection/search of those areas of the interior of the car where the driver or any passenger may “readily” access a weapon.

The Manual in the section on Investigatory Stop and Frisk and Threshold Inquiry forbids discriminatory stops: “stops shall NOT be used to stop persons based on their race, color, religion, national origin, ethnic group, ancestry, gender identity or sexual orientation, political or social opinions or attire, without an additional lawful basis for the stop.”

Since 2015, the BPD has kept separate databases for field contacts and field interrogations (FI) which are the persons stopped by the police whom the police have reasonable suspicion based on specific articulable facts and circumstances that the person has committed, is in the process of committing or is about to commit a crime. Field contact data is not mixed into field interrogations. BPD distinguishes field contacts from field interrogations as individuals who the police encounter during the normal course of police duties but need to be identified. The data is available since the Manual requires an officer “in every case” to make a computerized FI and/or a report with specifics such as the race of the person stopped or reason for the stop, even if nothing

is found during a pat frisk, or the detained person is free to leave after questioning⁶².

The same record keeping applies to automobile stops, namely to document the stop in the FI system, even if no citation were issued. The FI records capture all stops based on reasonable suspicion for questioning by the police, whether the person is on foot or in a car.

Below is a table of 2020 field interrogations, broken down by race and gender.

2020 Field Interrogations: 36			
Race		Gender	
White	17	Male	30
Black	11	Female	6
Hispanic/Latino	1	Unidentified	0
Asian/ Pacific Islander	5		
Middle Eastern/ East Indian	2		
Native American/Alaskan Native	0		
Unclassified	0		
Total:	36	Total:	36

The 2018 Year End Racial Disparities Report sets out data from 2015 to 2018. The number of FI has decreased from 78 in 2015 to 26 in 2018. The number of residents stopped ranges from 27 in 2015, 6 in 2016, 12 in 2017 and 7 in 2018.

⁶² See Manual, Investigatory Stop and Frisk and Threshold Inquiry, p. 8. The Manual states computerized FI entry and/or a report with specifics is mandated in every case. Community interactions by the BPD for which there is no reasonable suspicion for a crime being committed such as responding to the service call by a citizen of a boisterous group of young people sitting in a park at night may not be documented.

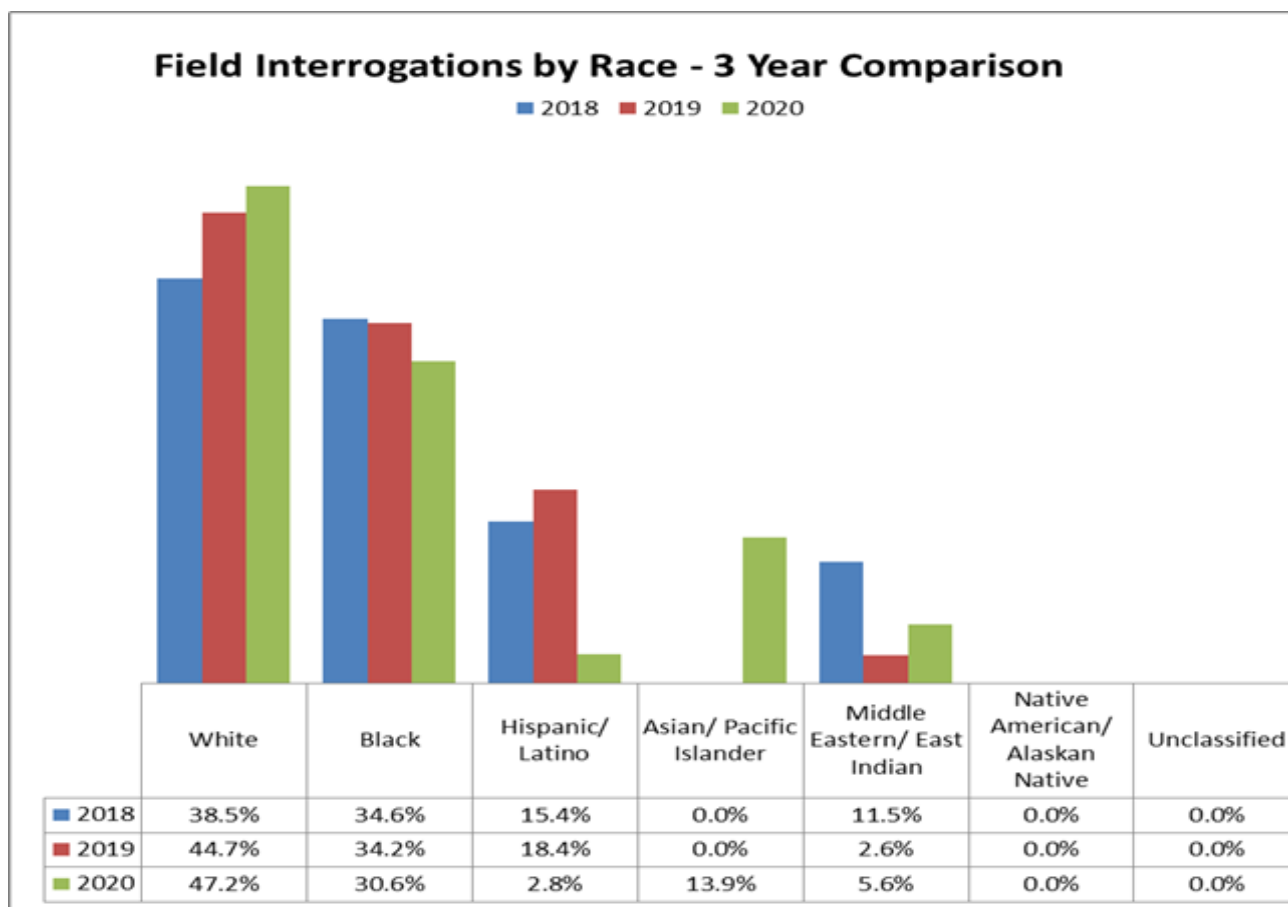
2015 FIs:	Resident		Non-Resident		Total	Total %	2016 FIs:	Resident		Non-Resident		Total	Total %
White	12	15.2%	20	25.3%	31	40.5%	White	5	10.6%	11	23.4%	16	34%
Black	5	6.3%	21	26.6%	23	32.9%	Black	0	0%	17	36.2%	17	36.2%
Latino	4	5.1%	7	8.9%	11	13.9%	Latino	0	0%	12	25.5%	12	23.5%
Asian	2	2.5%	1	1.3%	3	3.8%	Asian	1	.02%	0	0%	1	2.1%
Middle Eastern	4	5.3%	1	1.3%	5	6.3%	Middle Eastern	0	0%	1	2.1%	1	2.1%
Other	0	0%	2	2.5%	2	2.5%	Other	0	0%	0	0%	0	0%
Total:	27	34.2%	51	65.8%	78	100%	Total:	6	12.8%	41	87.2%	47	100%

2017 FIs:	Resident		Non-Resident		Total	Total %	2018 FIs:	Resident		Non-Resident		Total	Total %
White	5	10.4%	10	21%	15	31.2%	White	3	11.5%	7	26.9%	10	38.5%
Black	5	10.4%	18	37.5%	23	48%	Black	2	7.7%	7	26.9%	9	34.6%
Latino	0	0%	4	8.3%	4	8.3%	Latino	1	3.8%	3	11.5%	4	15.4%
Asian	1	2%	0	0%	1	2%	Asian	0	0.0%	0	0.0%	0	0.0%
Middle Eastern	0	0%	2	4.2%	2	4.2%	Middle Eastern	1	3.8%	2	7.7%	3	11.5%
Other	1	2%	2	4.2%	3	6.3%	Other	0	0%	0	0%	0	0%
Total:	12	24.8%	36	75.2%	48	100%	Total:	7	26.9%	19	73.1%	26	100%

FIs comparison by race and residency by BPD from 2018 Year End Racial Disparities Report.

2019 FIs:	Resident		Non-Resident		Total	Total %
White	10	26.3%	7	18.4%	17	44.7%
Black	0	0.0%	13	34.2%	13	34.2%
Latino	2	5.3%	5	13.2%	7	18.4%
Asian	0	0.0%	0	0.0%	0	0.0%
Middle Eastern	1	2.6%	0	0.0%	1	2.6%
Native American	0	0.0%	0	0.0%	0	0.0%
Other	0	0.0%	0	0.0%	0	0.0%
Total	13	34.2%	25	65.8%	38	100.0%

2019 FIs racial and residency comparison by BPD from 2020 Mid-Year Review, p. 12.



3 year comparison of FIs by race by BPD from 2020Year Review, p. 16.

Similar to the traffic citations, the majority of FIs are nonresidents. The range of nonresident FIs from 2015 to 2020 is 65.8% to 83%. The rates of being stopped and questioned between White and Black non residents should be higher for White nonresidents than Black nonresidents. However, in 2015 and 2020, the rates were: 25.3% to 36.1% White nonresidents and 26.6% to 30.6% Black nonresidents. In 2016 and 2017, more Black nonresidents (36.2% and 37.5%) were stopped and questioned than White nonresidents (23.4% and 21%).

For 2020, the data reflect that same disparity between White and Black nonresidents who are subjected to FIs.

2020 FIs:	Resident		Non-Resident		Total	Total %
White	4	11.1%	13	36.1%	17	47.2%
Black	0	0.0%	11	30.6%	11	30.6%
Latino	0	0.0%	1	2.8%	1	2.8%
Asian	2	5.6%	3	8.3%	5	13.9%
Middle Eastern	0	0.0%	2	5.6%	2	5.6%
Native American	0	0.0%	0	0.0%	0	0.0%
Other	0	0.0%	0	0.0%	0	0.0%
Total	6	16.7%	30	83.3%	36	100.0%

2020 FI data by BPD from 2020 Year End Review, p. 18

The data shows a pattern that more nonresidents are the subjects of field interrogations by the BPD than residents; and the rates of FIs between White and Black nonresidents are similar. However, the data does not appear to show the same racial disparity between Black and White residents being stopped and questioned.

The nonresident disparity needs more exploration to determine the factors or causes for the disproportionate amount of nonresidents being stopped and the disproportionate number of Black nonresidents when compared to White nonresidents.

As part of the overall oversight and supervisory duties and responsibilities as described in the Manual, a Lieutenant reviews every field interrogation entry to determine that the field interrogation was conducted according to the law and the policies, rules and regulations of the BPD. If the field interrogation data were not properly documented according to the Manual, and/or the field interrogation were not conducted properly, the Lieutenant has the duty and responsibility to bring that issue to the Officer-in-Charge for that particular officer. The Officer-in-Charge according to the Manual is the designated shift commander who could be a ranking officer, Lieutenant or Sergeant.

The subcommittee requested that the BPD provide the data for the FIs recorded by police officers for the past three years without any personal identifying information in

order to conduct a review as to whether the FIs are being conducted pursuant to the policies, rules and regulations in the Manual. Due to the BPD's record management system being built to house data and not to easily run reports as the subcommittees of the Police Reform or Task Force to Reimagine Policing have requested, the BPD crime analyst had to manually process such requests for data. After doing so, those three years of data were provided for the subcommittee's review which is included below.

The detailed FI data for the past three years, 2018 through 2020, show that most stops based on reasonable suspicion involve pedestrians⁶³; and annually, the BPD are making less than a handful of automobile stops for field interviews.

In 2018, there were 26 FIs, including two automobile stops. A Middleeastern nonresident driver was stopped on suspicion of a robbery, and a Hispanic nonresident driver was stopped on suspicion for narcotics and assault and battery on a police officer.

In 2019, there were 38 FIs including four car stops. A White resident driver and White resident passenger were stopped on suspicion for narcotics. A White resident driver was stopped on suspicion for malicious destruction of property. A Hispanic nonresident driver and Hispanic resident passenger were stopped on suspicion for narcotics. A Hispanic nonresident driver was stopped on suspicion for a shooting.

In 2020, there were 35 FIs including three car stops. A Black nonresident driver and passenger were stopped on suspicion for narcotics. A Middle Eastern nonresident driver was stopped on suspicion for narcotics. A Black nonresident driver and a Middle Eastern nonresident passenger were stopped on suspicion for looting.

⁶³ Those crimes being investigated on the streets in Brookline could be minor offenses such as trespass, shoplifting, tagging or graffiti to violent crimes such as assault, rape, armed robbery, shooting or domestic abuse to drug offenses as narcotics, in addition to arrest warrant apprehensions. App. 80-84.

In reviewing field interview data, it is hard to determine any significant trends given the number of FI's is so infrequent in comparison to the volume or number of officers (working on patrol and on detail assignments) on Brookline streets 24/7.

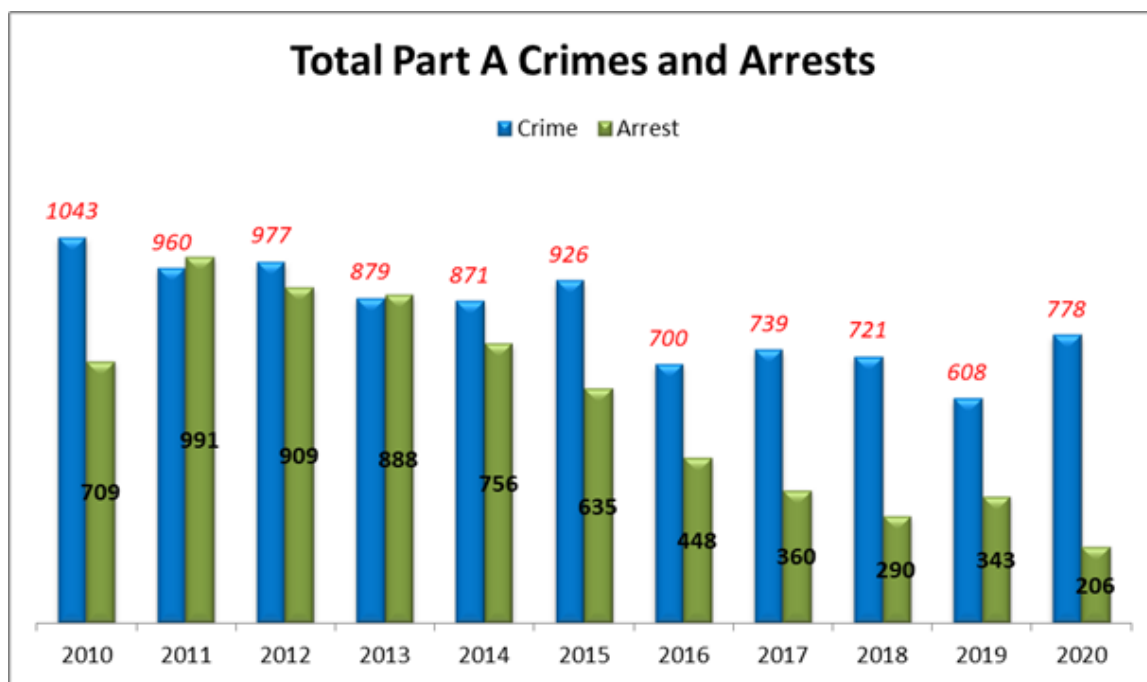
C. ARRESTS

The Manual describes in detail over twelve pages what constitutes an arrest; who can make an arrest; under what circumstances when an arrest may be required or may not be made; and how an arrest should be effectuated. A police officer is authorized to arrest a person when “[p]robable cause for arrest exists if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.”

The Manual tells the officer when an arrest can be made with an actual outstanding warrant or without a warrant, whether on the street or in a dwelling. The Manual describes under what circumstances Brookline officers may arrest in a neighboring municipality outside of Brookline.

Importantly, the Manual provides criteria when an officer although having the legal authority to arrest may exercise discretion not to do so. The Manual permits the officer under limited circumstances to exercise discretion “when the public interest could be better served by not making an arrest” such as aggravation of an existing situation, greater priority for more serious crime or urgent public emergency, mediated minor disputes where parties may know each other, or minor juvenile offenses. There is clear guidance that an officer should not arrest as a show authority or imposition of personal feelings. Examples are provided, such as attitude of, or explicit verbal, abuse from a person or when other more appropriate options exist for the officer.

As the 2020 Year End Review shows, the rate of arrests has declined annually as the overall crime rate has declined. In 2010, there were 709 arrests. In 2020, there were 206 arrests.

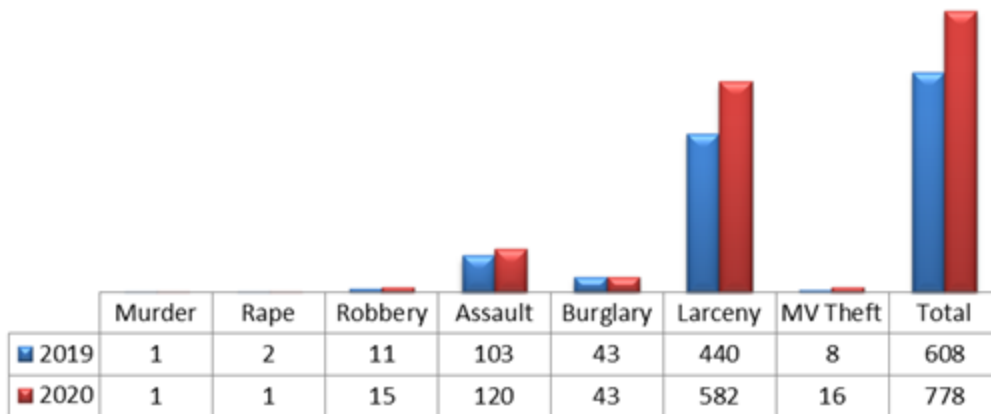


Graph showing 11 year decline in crime and arrests by BPD from 2020 Year End Review

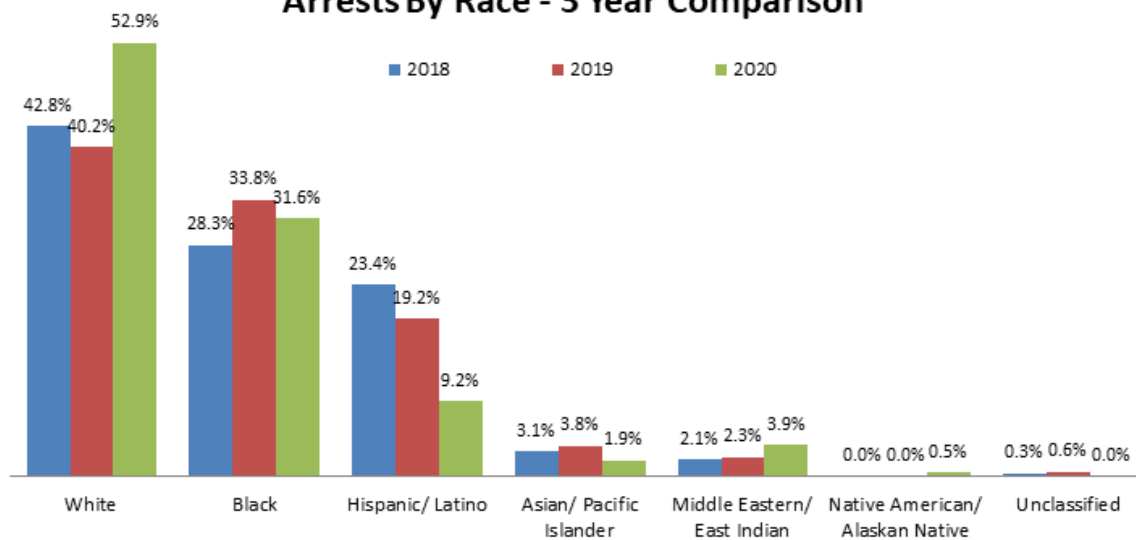
The graph below showing a comparison of crimes in 2019 and 2020 provides a summary of the types and numbers of crimes that the BPD are encountering.

Comparison of crimes by category and numbers in 2019 and 2020 by BPD from 2020 Year-End Review, p. 7.

Part A Crimes 2019 vs. 2020

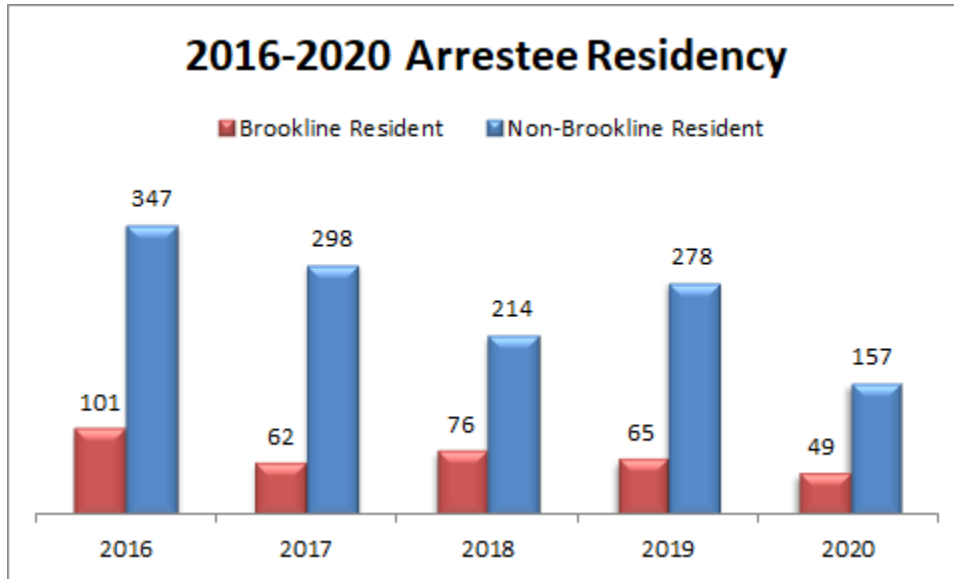


Arrests By Race - 3 Year Comparison



Three year comparison of arrests by race by BPD from 2018-2020.

The breakdown of arrests between residents and nonresidents is wide. In 2013, 83% or 731 of the arrests were nonresidents, while 17% or 145 arrests were residents. In 2020, the rate of arrests for nonresidents was 76% constituting 157 arrests. The percentage of arrests for residents was 24% from 49 arrests.



Five year comparison of arrests by residency by BPD from 2016-2020.

2013 Arrests:	Resident		Non-Resident		Total	Total %	2014 Arrests:	Resident		Non-Resident		Total	Total %
White	81	9.2%	263	30.0%	344	39%	White	70	9.3%	241	31.9%	311	41%
Black	30	3.4%	276	31.5%	306	35%	Black	27	3.6%	214	28.3%	241	32%
Latino	19	2.2%	142	16.2%	161	18%	Latino	11	1.5%	115	15.2%	126	17%
Asian	9	1.0%	21	2.4%	30	3%	Asian	12	1.6%	25	3.3%	37	5%
Middle Eastern	7	0.8%	29	3.3%	36	4%	Middle Eastern	3	0.4%	38	5.0%	41	5%
Total:	146	16.6%	731	83.4%	877	100%	Total:	123	16.3%	633	83.7%	756	100%

2015 Arrests:	Resident		Non-Resident		Total	Total %	2016 Arrests:	Resident		Non-Resident		Total	Total %
White	68	10.4%	209	31.9%	277	42.3%	White	50	11.1%	109	24.3%	159	35.5%
Black	16	2.4%	192	29.4%	208	31.8%	Black	15	3.3%	136	30.4%	151	33.7%
Latino	16	2.4%	119	18.2%	135	20.6%	Latino	14	3.1%	81	18.1%	95	21.2%
Asian	10	1.5%	13	2.0%	23	3.5%	Asian	11	2.4%	12	2.7%	23	5%
Middle Eastern	3	.5%	8	1.2%	11	1.7%	Middle Eastern	5	1.1%	6	1.3%	11	2.5%
Native American	0	0%	0	0%	0	0%	Native American	0	0%	0	0%	0	0%
Other	0	0%	0	0%	0	0%	Other	6	1.3%	3	.6%	9	2%
Total:	113	17.3%	541	82.7%	654	100%	Total:	101	22.5%	347	77.5%	448	100%

2017 Arrests:	Resident		Non-Resident		Total	Total %	2018 Arrests:	Resident		Non-Resident		Total	Total %
White	27	7.5%	127	35.3%	154	42.7%	White	46	15.9%	78	26.9%	124	42.8%
Black	12	3.3%	103	28.6%	115	32%	Black	9	3.1%	73	25.2%	82	28.3%
Latino	14	3.9%	52	14.4%	66	18.3%	Latino	13	4.5%	55	19.0%	68	23.4%
Asian	5	1.4%	8	2.2%	13	3.6%	Asian	6	2.1%	3	1.0%	9	3.1%
Middle Eastern	3	.8%	6	1.7%	9	2.5%	Middle Eastern	2	.7%	4	1.4%	6	2.1%
Native American	1	.3%	1	.3%	2	.6%	Native American	0	0%	0	0%	0	0%
Other	0	0%	1	.3%	1	.3%	Other	0	0%	1	0.3%	1	0.3%
Total:	62	17.2%	298	82.8%	360	100%	Total	76	26.2%	214	73.8%	290	100%

5 year arrests with racial and residency comparisons by BPD from 2018 Year-End Racial Disparities Report.

2019 Arrests:	Resident		Non-Resident		Total	Total %
White	44	12.8%	94	27.4%	138	40.2%
Black	11	3.2%	105	30.6%	116	33.8%
Latino	5	1.5%	61	17.8%	66	19.2%
Asian	2	0.6%	11	3.2%	13	3.8%
Middle Eastern	3	0.9%	5	1.5%	8	2.3%
Native American	0	0.0%	0	0.0%	0	0.0%
Other	0	0.0%	2	0.6%	2	0.6%
Total	65	19.0%	278	81.0%	343	100.0%

2020 Arrests:	Resident		Non-Resident		Total	Total %
White	30	14.6%	83	40.3%	113	54.9%
Black	10	4.9%	52	25.2%	62	30.1%
Latino	4	1.9%	16	7.8%	20	9.7%
Asian	3	1.5%	2	1.0%	5	2.4%
Middle Eastern	2	1.0%	3	1.5%	5	2.4%
Native American	0	0.0%	1	0.5%	1	0.5%
Other	0	0.0%	0	0.0%	0	0.0%
Total	49	23.8%	157	76.2%	206	100.0%

2019 and 2020 arrest data with racial and residency comparison by BPD from 2020 Year End Review

The rates of arrests between White and Black non-residents were the same historically and may indicate a racial disparity.

In 2013, rates of arrests with White and Black nonresidents were 30.0% and 31.5% respectively, while the rate was 9.2% representing 81 White resident arrests and 3.4% representing 30 Black resident arrests.

In 2018, the rate of arrests was 26.9% for White nonresidents and 25.2% for Black nonresidents, while the rate was 15.9% representing 46 White resident arrests and 3.1% representing 9 Black resident arrests.

In 2019, the breakdown of arrests between nonresidents and residents are 81% and 19% respectively, similar to the breakdown of 2020 traffic stops, 86% nonresidents and 14% residents. For 2020, the breakdown of arrests between nonresidents and residents is 76.2% and 23.8%, respectively. Below is a look at the arrest rate of black residents, which has gone down significantly since 2013.

Arrests per 1K black resident population				
Year	# of Black residents Arrested	Black Residents Pop		Rate
2013	30	1,997	1000	15.02
2014	26	1,997	1000	13.02
2015	16	1,997	1000	8.01
2016	15	1,997	1000	7.51
2017	12	1,997	1000	6.01
2018	9	1,997	1000	4.51
2019	11	1,997	1000	5.51
2020	10	1,997	1000	5.01

D. Conclusion about racial profiling⁶⁴

⁶⁴ At the request of the subcommittee to provide perspective on the recent data in this report, the BPD assembled three tables with graphs listing the breakdown by race for arrests, FIs and moving violations for a 21 year period, 2000-2020. See "Percentage Breakdown by Race of Arrestees, Field Interviews/Interrogations and Moving Violations over 20 Years". App.85-88. Each of the graphs shows the percentage by race of the total in each category. Because the raw data can vary so much (i.e. this past year 2020, the BPD only issued 3400 citations, 10,000 less than the year prior in 2019, so total figures are misleading).

Some caution about relying on the accuracy of the data in the tables needs to be considered: 1) the data in the earlier years may not be accurate as the more recent data due to the BPD's use of a crime analyst to keep that data; 2) the BPD records management system did not have the same racial categories included in the summary reports in the early days such as the present racial categories of Hispanic/Latino and Middle Eastern/East Indian which was not a separate category until 9/11 terrorist attacks on September 11, 2001. Every record for a traffic stop, field interview or arrest must be read and then

There appears to be a pattern that more nonresidents than residents are subjected to traffic stops, FIs and arrests. There appears to be a pattern that Black nonresidents represent a disproportionate number compared to White nonresidents. The White-Black nonresident disparity does not seem to be present with White residents and Black residents. On the whole, White residents are the subjects of more FIs and arrests than Black residents. The 2020 data as to traffic citations show that far more nonresidents than residents are the subjects of traffic stops in Brookline but does not show any racial disparity as between White and Black nonresidents or between White and Black residents.

Recommendations

- A. Further, indeed, ongoing review and investigation by the PCAC is very important as to apparent disparities between nonresidents and residents and between White nonresidents and Black nonresidents. Professor McDevitt (supra), stated the treatment between non residents and residents is -- aside from benchmarks - - nonetheless a “very important” factor to review in the data, i.e. how officers interact with non-resident drivers after stops. While unconscious bias may never get to zero -- for officers or for people in general -- we must keep striving for that crucial goal.
- B. The BPD has published racial/gender disparities data (for over two decades on car stops by race for transparency and accountability, started by Chief O’Leary in 1997, ten years after it was theoretically agreed by a unanimous Select Board, but still the first in Mass., with now about 50 others doing so. More community outreach or engagement needs to occur between the BPD and the residents to explain the data and significance of the racial disparity data published annually

manually tallied individually for twenty years to obtain an accurate picture of the trends for the past twenty years. Such an endeavor is labor intensive for the BPD; and 3) the officers' perceptions of race for FIs and moving violations were not required earlier.

and mid-year, to provide factual information and promote trust between the BPD and the community, and to keep reducing such disparities when not justified by public safety needs. The respective Community Engagement subcommittees of both the Select Board's Committee on Policing Reforms and Task Force to Reimage Policing seem to have recommendations that could be adopted for this purpose. Also, the proposed PCAC must have as a priority a role on this, especially on integrating such data into both further specific policy reforms, including for improving supervision, accountability, incentives, and disincentives - and as recommended, having periodic (at least annual) public hearings

- C. Although the BPD has data about traffic stops, the BPD needs an accurate benchmark data to compare the BPD data to determine the extent of disparate treatment and to measure the effectiveness of any changes in policing. Another windshield/observational or crash study is absolutely warranted by a research institution like Northeastern University which has some history with Brookline. With the ongoing pandemic, the study cannot be now, but should be conducted as soon as possible by BPD and the PCAC when the traffic in and around Brookline has returned to normalcy⁶⁵. The estimated cost of the study must be a high priority for adding to the budget.
- D. The traffic stop data should continue to be broken down like the FIs and arrests by race and by residency. Until 2020, the Moving Violation data was not treated like the FIs and arrests. There is a specific policy in the Traffic Enforcement/Investigation/Control section of the Manual stating that the BPD should not give residents preferential treatment over nonresidents. However, there is no means to monitor compliance with even the above-mentioned policy if the BPD does not provide the traffic violation data broken down into residents and nonresidents and racial background of the two categories. Again these must

⁶⁵ Professor McDevitt made this recommendation to conduct the traffic study -- but only after the pandemic.

be priority issues for the PCAC, including any proposed policy changes to address any unwarranted disparities.

The Subcommittee also recommends that additional staff time or a staff person be added for the purpose of entering additional traffic citation data to include time of stop, full address of the traffic stop and resident vs nonresident, in addition to those data points currently collected. The collection of this additional data will allow for more enhanced analysis of enforcement efforts as it relates to high crash areas and high traffic volume locations and times. Additionally, given the volume of traffic stops, traffic crashes and requests from residents to conduct traffic enforcement, and the concerns generated as to the disparate enforcement of traffic violations, the Department may want to add additional analytical staff to focus on traffic analysis and/or an additional technical staff person in the IT Unit who can automate the collection, extraction and analysis of pertinent public safety data which can assist in identifying racial disparities, trends, and aggregating police data to ensure a better and fairer deployment of police resources. Software/hardware for automation of data collection and data generation ought to be considered. The estimated cost to implement the data collection recommendation should be considered for addition to the upcoming budget.

- E. The 600+ page Manual, which directs officers in conducting arrests, field interviews, traffic enforcement, among many other activities, should weave throughout clear statements as to the commitment of the Town and Department to uphold civil liberties and to ensure racial equity in all of its activities. The manual should encourage officers to be mindful in their day to day activities of the racial injustices and inequalities that exist for BIPOC in America today. Further or additional criteria should be considered and added to guide the officer in the use of discretion in this area⁶⁶. Again, this should be a PCAC priority.

⁶⁶ see Commonwealth v. Lang Lek __ Mass. __ (Mass. App. Ct. 2/11/21)(an admitted pretext stop case, but evidence suppressed on other grounds): “We echo the concerns... of the SJC in its recent decision in

- F. Line supervisors should conduct a regular review of the activity of officers under their command to include reviewing a subordinates' field interviews, moving violations and arrests with consideration given to whether there are potential disparities in their enforcement and addressing any areas of concern they find.

III. CIVILIAN RACIAL PROFILING - SUSPICIOUS PERSON CALLS

Some minority residents have expressed the fear of being stopped or approached by the BPD, when they have not done anything out of the ordinary. The subcommittee explored those incidents where the police officer has seen no criminal activity to be investigated, but a citizen calls the BPD about the concern for a suspicious person or suspicious activity in the area and asks the BPD to respond to that concern.

The report prepared by the Brookline Police Department Community Service Division is attached⁶⁷. This report reviews calls initiated by citizens and officers for suspicious activity and is broken down by type of suspicion and race. The findings of the report are below (and attached).

In 2019, there were 539 CAD calls that were classified as suspicious incidents. These 539 calls are separated into three categories. After receiving a call, the dispatcher categorizes the call as: general suspicious activity report, suspicious person, or suspicious motor vehicle. Of the 539 calls received by Dispatch, 286 were categorized as suspicious activity, 165 were categorized as a suspicious person, and 88 were categorized as a suspicious motor vehicle.

507 (or 94%) of the 539 CAD entries for suspicious activity originated from citizens who called reporting a suspicious observation. In the charts in the report, you can see the

Long, 485 Mass. at 726-730, and note that a policy of unbridled discretion is an obvious invitation to arbitrary action and, particularly when the few things known about a vehicle seen on the street can include the driver's race, it would obviously be a matter of concern were such a policy adopted, at least without strict and explicit criteria for its use."

⁶⁷ App. 89-122.

breakdown of calls originating from citizens, as well as police, by race. Omitted from these charts below are 36 calls where race was not applicable (scam phone calls, shell casings, unsecured vehicles). Of the 507 calls by citizens, 230 included race as a description and of the 32 calls initiated by officers, 30 included race as a description.

Of the calls initiated by a citizen in which there was a description given of an individual, 107 were white, 72 were black, 8 were Asian, 9 were Hispanic/Latinx, and 7 were Middle Eastern. 270 calls where an individual was mentioned had no mention of race by the caller. For the calls initiated by officers, 12 of the individuals were identified as white, 5 were black, 1 was Asian, 1 was Hispanic/Latinx, and none were Middle Eastern. In 11 of those calls where an individual was indicated, there was no race indicated.

Of the suspicious activity calls initiated by police, three individuals were arrested. Several of the incidents were determined to be medical emergencies or intoxicated persons. The majority of the calls resulted in an officer advising the person in question of a Town-By-Law violation or the complaint and sending the person on their way.

As part of their training to field calls related to suspicious activity, all dispatchers or telecommunicators are issued the following, which is part of the Public Safety Telecommunicator Training Manual:

From the Public Safety Telecommunicator Training Manual:

31 Suspicious Activity

Citizens report all types of events to the police when they think that something illegal is happening. Usually the event is innocent, but only personal evaluation by a police officer can determine that this is so. Callers who say "I see a suspicious person/car/etc." should be questioned as to WHY they feel it is suspicious? A good description and location is necessary for the responding officers to locate and evaluate the suspicious person/car.

The telecommunicator should avoid putting a Suspicious Activity/Person into the CAD without an explanation of why it is suspicious. Explain the suspicious activity as explained

by the caller. Enter what the caller saw or heard and let the officers draw their own conclusions. The following information is needed:

- Name, address, telephone number, and location of reporting person.
- Location of suspicious event.
- What is suspicious about the activity?
- Full descriptions of suspicious person/car.

A telecommunicator tries to determine from the caller what the caller actually sees and hears, if the caller has seen the person/vehicle in the area in the past, and if the caller will meet with the responding officer to point out the person/vehicle to the officer.

A telecommunicator is also aware of the need to articulate the specifics of the call in the narrative when entering the call into the CAD system. The response by the officer is guided by the information provided by the telecommunicator. An Officer is given the discretion to make her/his own assessment of the call when the officer arrives on scene. If the officer does not believe that any suspicious activity amounting to criminal activity is taking place, the officer is not expected to further investigate or check on the person. The officer will inform the dispatcher that the officer observed no suspicious activity, and that the officer is clearing the call. This information is then put into the CAD system.

The Chief of Public Safety Dispatch confirms that the dispatchers are following the policies and procedures in the training manual and utilizing the training in practice when a caller does not provide sufficient information to process the call about a suspicious person or activity for an officer response⁶⁸.

⁶⁸ App. 122A-122B.

Recommendation:

- 1) Dispatchers should be encouraged -- by written guidelines and factors that (also for transparency) should be added to the Manual, e.g. --to ask for and include additional information in the CAD record as to what the caller's found suspicious about a person, vehicle or activity and to ascertain and include, to the extent possible, race, gender, ethnicity and other specifics about the subject of their call.
- 2) Patrol Supervisors should continue to monitor these types of calls and request additional information from Dispatch when appropriate to determine if there is a legitimate concern that has been articulated as to the suspicious activity and/or if there may be bias on behalf of the caller.
- 3) Officers should be encouraged to include more details in their call back as to what the findings of the suspicious activity call were.
- 4) During community engagement sessions between the BPD and Brookline residents, the BPD should remind residents that suspicious calls must not be based upon a person's race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level since all persons in Brookline have a right to bias free policing. BPD and PCAC should discuss with the CDICR other avenues to minimize unconscious civilian bias. Ultimately no police department is likely to be better than its community in this important regard.

V. MUTUAL AID AGREEMENTS AND COMMAND AND CONTROL PROCEDURES FOR MASS EVENTS, DEMONSTRATIONS, ETC. INCLUDING BROOKLINE POLICE DEPARTMENT'S SPECIALIZED UNITS

The subcommittee obtained copies of the documents in which the BPD has formalized a relationship with another agency. The list is attached as Appendix 123.

For supervisory control over other law enforcement agencies in Brookline, the Manual designates the Chief of Police. The Manual on page one specifically provides that the Chief of Police supervises and oversees the entire department and also "[c]oordinates

departmental action with other law enforcement agencies in cooperative measures for crime prevention and law enforcement.” In the Chief’s absence, or at the Chief’s direction, the Superintendent would be responsible for working with other law enforcement agencies.

The Manual in General Order Number. 40.1 sets out the Supervisory Management policies. The supervisory standard is “to ensure a reasonable span of control at all times.”

Some of the fourteen agreements that may be of general interest are discussed here. All but one of the agreements are with outside law enforcement agencies. Some of the agreements may be affected by the Police Reform Law.

A. One internal agreement between BPD and the Brookline Public School

The role of the police in the schools has been discussed in the Brookline community. The nine page Memorandum of Understanding (MOU) between The Public Schools of Brookline does set out that relationship in detail together with the role of the Norfolk County District Attorney. The effective date of the MOU is October 31, 2019 until rescinded by the parties to the MOU. There are eight parts to the MOU.

Part I. sets out the Purpose of the MOU “to establish a unified strategy” to have a “safe and secure environment” for the Brookline school community. The General Principles in Part II. provides for coordination between The Public Schools and the BPD to prevent alcohol and drug abuse and “to promote a safe and nurturing environment in the school community.” Each of the parties to the MOU designates in Part III. named liaisons from the BPD including the School Resource Officer (SRO) and the Public Schools.

The issues of concern of the parties are set out in Part IV. One issue is the School and BPD liaisons would review reportable incidents classified as Mandatory Reportable Incidents and any other incident which “may affect the safety or wellbeing” of persons in the schools. The other issue is an agreement between the BPD, The Public Schools

and the Norfolk DA to meet regularly to, amongst other things, discuss incident of school violence or bullying, discuss use of alcohol or drugs or any other school criminal activity, identify strategies to reduce school violence or drug/alcohol use, develop prevention and intervention programs, and outline action plans to implement any strategy.

In Part V. the BPD and The Public Schools agree to report certain incidents to each other. The Public Schools agree to tell the BPD Mandatory Reportable Incidents such as possession, use, sale or distribution of alcohol, drugs, inhalants or controlled substances; assaultive behavior or threats; possession of weapons such as guns, knives or ammunition; stalking, harassment, cyberbullying, domestic or dating abuse or violence; hate crimes; hazing; sexual assault, etc. The BPD in return will tell The Public Schools, subject to any confidentiality prohibitions, about the arrest of any student and anything that happens involving a student if that activity poses any type of threat to the safety of the student, other student or administrative personnel; disclosure would assist the school to provide “supportive intervention” on behalf of the student; or the activity involves truancy.

Part VI. Entitled Procedure Guidelines sets out how The Public Schools should proceed with notification of an Emergency Situation or Non-Emergency Situation to the BPD, the parents or guardians, preservation of any physical evidence, and notification to the BPD of any written reports.

Part VII. Provides for Procedures for Interviewing or Arresting Students on Schools grounds. In summary, except in an emergency, the BPD may not detain or question a student without first contacting the principal and the parents. There is a recognition that “the vast majority of juveniles involved in incidents are likely candidates for positive diversion and intervention efforts”. As a result, the student should not ordinarily be arrested on school property, unless the crime was a “serious or violent felony” if an adult had allegedly committed the crime. If an arrest had to be made on school property in an

emergency, the manner of arrest must be the least disruptive and embarrassing method.

Both the BPD and The Public Schools agree to train the respective staff to implement the agreement according to Part VIII.

The Norfolk District Attorney provides a written commitment to the BPD and The Public Schools to host regular School Security Roundtable Meetings under the MOU. The purpose of the Roundtable is for information sharing about Brookline students from initiation of a complaint, adjudication, consultation to set terms of release pending trial or probationary terms, notification of terms of release or on probation, and consultation when making prosecution decisions.

However, the Police Reform Law in section 79 amended the school resource officer law with a new provision in chapter 71 section 37P. The Police Reform Law has extensive provisions about the detailed contents of a model school resource officer (SRO) memorandum of understanding (MOU) to be developed by a diverse multiple discipline group called the model school resource officer memorandum of understanding review commission “not later than February 1, 2022 for implementation starting in the 2022 school year.”⁶⁹ In September 2022, the existing 9 page MOU will no longer be in effect. The school resource officer program will be governed by the new law.

The Police Reform Law also requires any police officer who is designated as a school resource officer to be specially certified by the Massachusetts Peace Officer Standards and Training Commission⁷⁰.

Unlike Brookline’s existing MOU, there is nothing in the Police Reform Law about the role of the District Attorney’s office or about a Roundtable. It appears that the present role of the District Attorney or any other third parties may have to be re-evaluated in light of the new confidentiality provision in the Act relating to the school resource officer

⁶⁹ Section 113 of the Act.

⁷⁰ Section 3(b) of c. 6E

program. “School department personnel and school resource officers, as defined in section 37P, shall not disclose to a law enforcement officer or agency, including local, municipal, regional, county, state and federal law enforcement, through an official report or unofficial channels, including, but not limited to, text, phone, email, database and in-person communication, or submit to the department of state police’s Commonwealth Fusion Center, the Boston Regional Intelligence Center or any other database or system designed to track gang affiliation or involvement, any information relating to a student or a student’s family member from its databases and other recordkeeping systems”⁷¹.

B. Agreement by BPD with outside law enforcement agencies⁷²

The mutual aid statutes, St. 1998, c. 212 and M.G.L. c. 40 sec. 8G, gives the police officer from the neighboring jurisdiction the power of arrest. For example, the arrest once made and subsequent custody and prosecution would be the responsibility of the Boston or Newton Police. However, the mutual aid agreement permits the supervisor in the jurisdiction where the arrest is made, namely Brookline, to take responsibility for the custody and prosecution of the arrestee.

The mutual aid agreement with Boston, Newton and Brookline provides that the Boston and Newton officer may act within 500 yards of Brookline as if the officer was sworn in Brookline. The Boston or Newton officer acting like a Brookline officer would be overseen by the Brookline Chief of Police.

Next, the mutual aid agreement with Newton Police Department to assist with paid police details requires that Brookline Police to be “under the operation and direction” of the BPD’s Commanding Officer.

⁷¹ Section 78 of the Act adding section 37L of chapter 71 of the General Laws.

⁷² Besides the MOU with the federal Secret Service, the BPD has no other agreements with federal law enforcement agencies like ICE. In fact, General Order Number: 43.0 in the Manual prohibits the BPD from detaining any person with a detainer issued by the federal Immigration and Customs Enforcement (ICE) or using any resources for ICE.

Formal mutual aid agreements have been used in the past to define agreements and responsibilities for participating police departments to provide assistance to one another under certain conditions. These conditions are identified and predictable and do not vary. For example, the Brookline PD's agreement with Newton PD to assist in the performance of police details. We recommend these types of written agreements continue to be agreed upon when they are used to define long standing police operations.

In addition to the mutual aid statute, Brookline's Police Chief may ask for help through a different law. Chapter 41 of the General Laws Section 99⁷³ allows a commanding officer (and others) from one department to seek officer(s) from another department to assist them in order to better perform the municipality's public safety responsibilities. This type of request is a common occurrence in policing and covers a wide variety of requests such as: an officer's need for a specific language capability, for assistance in the search for a missing person, for assistance to manage a spontaneous disturbance or to provide officers to assist in a planned demonstration. Formal mutual aid agreements are not needed under this law. A simple request from a supervisor of one Department to a supervisor of another Department is sufficient to meet the requirements of this statute. It is not uncommon for the Brookline Police to utilize this public safety benefit as well as provide assistance under it. Our recommendation would be for Brookline Police to keep operating in this manner and to commit to tracking the times and incident types when this statute is used as well as any written documents surrounding a request for assistance.

An example of the BPD's utilization of c. 41 §99 is the assistance provided by the Norfolk County Sheriff during the Black Lives Matter march event on June 5, 2020.

⁷³ See App. 187-191.

The BPD had anticipated that the event was going to be well attended and made a request for assistance from the Norfolk County Sheriff to be able to keep order in light of past events in other municipalities.

With respect to the Norfolk Sheriff, there was no memorandum of understanding or agreement with the BPD and the Norfolk Sheriff. The letter from the Norfolk Sheriff merely states how the BPD may request assistance from the Norfolk Sheriff. The letter lists the type of resources that the Norfolk Sheriff has to assist local law enforcement. According to the Norfolk Sheriff's website, these resources or special operations would be deployed at the invitation of the local chief of police "to support local law enforcement." "Over half of our uniformed staff have completed training through the Municipal Police Training Committee Reserve Intermittent Academy and are sworn as Deputy Sheriffs. Norfolk Deputy Sheriffs are available to assist local police departments with large events" amongst other needs of local law enforcement.

According to the Norfolk Sheriff's website, the Command Center is a "mobile command center which can be dispatched to local cities and towns during a crisis, law enforcement operation, rescue operations, or to assist with monitoring large community events." "Mobile Operations Unit (MOP) consists of five officers all of whom have completed a Basic Motorcycle Operators Course." "The Sheriff's Response Team (SRT) is a rapid-response unit of specially trained correction officers" who respond to disruptive incidents within the correctional center and "also assist with high-risk situations in the community". There is no description of the Pedal Bikes or Honor Guard Unit on the website.

In each Year-End Report, the Traffic and Records Division does have a section called Special Events. That portion of the 2019 Year-End Review talks about policing and security for the annual 'Boston Marathon', 'Brookline Day', the July 4th at Larz Anderson and Summit parks, Walk for Hunger, half marathons and others.

General Order Number 42.0. Special Operations/V.I.P. Security reflects “the policy of this Department to actively participate in multi-agency operational planning for the entirety of the event (before, during, and after), that incorporates the needs and response efforts of all participating agencies, in order to help facilitate a successful event.” Under the General Order, the Deputy Superintendent-Traffic Division is responsible for the planning and coordinating of all planned special events occurring within the Town of Brookline. The Commanding Officer-Traffic Division is responsible for a special event and shall prepare a written operation plan which includes the estimated crowd size, traffic and any particular crime problems and any contingency for traffic issues. After the event, there is a report containing the crowd size, traffic congestion, any crime issues and recommendations for future similar events

There are new provisions relating to mass demonstrations or protests in the Police Reform Law. The provision of the Police Reform Law creating the new Massachusetts Peace Officer Standards and Training Commission requires⁷⁴ police departments and police officers to undertake certain measures on the use of force before and after demonstrations.

A police department will have an obligation to plan for a demonstration with designation of an officer-in-charge. “When a police department has advance knowledge of a planned mass demonstration, it shall attempt in good faith to communicate with organizers of the event to discuss logistical plans, strategies to avoid conflict and potential communication needs between police and event participants. The department shall make plans to avoid and de-escalate potential conflicts and designate an officer in charge of de-escalation planning and communication about the plans within the department.”

⁷⁴ Section 30 of Ch. 253 of the Acts of 2020, chapter 6E section 14(e).

During a demonstration, a police officer cannot use force unless de-escalation is not feasible, and the force to be used is “necessary to prevent imminent harm and the foreseeable harm” and is proportionate to the threat of harm. “A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or order the discharge of rubber pellets from a propulsion device or release or order the release of a dog to control or influence a person’s behavior unless: (i) de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and (ii) the measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or other chemical weapon, rubber pellets or dog is proportionate to the threat of imminent harm.”

If a police officer uses force, the police department will have an obligation to file a detailed report with the Massachusetts Peace Officer Standards and Training Commission concerning the necessity for use of force during the demonstration. “If a law enforcement officer utilizes or orders the use of tear gas or any other chemical weapon, rubber pellets or a dog against a crowd, the law enforcement officer’s appointing agency shall file a report with the commission detailing all measures that were taken in advance of the event to reduce the probability of disorder and all de-escalation tactics and other measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using the tear gas or other chemical weapon, rubber pellets or dog.”

“The commission shall review the report and may make any additional investigation. After such review and investigation, the commission shall, if applicable, make a finding as to whether the pre-event and contemporaneous de-escalation tactics were adequate and whether the use of or order to use such tear gas or other chemical weapon, rubber pellets or dog was justified.”

RECOMMENDATIONS

- A. The Police Department should conduct a review of the Manual’s General Order Number 42.0 Special Operations/V.I.P. Security to ensure it is sufficient to guide

the actions of the Officers during certain events, and changes and/or recommendations from the Massachusetts Police Peace Officer Standards and Training Commission, that are accepted by the Select Board, are included.

- B. For assistance without a formal agreement pursuant to M.G.L. c. 41 §99, the Brookline Police Department continues to operate in the existing manner and to commit to tracking the times and incident types when this statute is used as well as any written documents surrounding a request for assistance.
- C. Any outside law enforcement official assisting the BPD must conspicuously display at all times a clearly identifiable Department insignia such as a badge, patch or Department name on the exterior of any clothing, uniform or gear/equipment to enable any person to ascertain the identity of the official.
- D. The Manual will have to be revised with new statutory requirements to be adopted by the Select Board.
- E. The BPD with PCAC input and the school department should determine if they should enter the into a model school resource officer (SRO) memorandum of understanding (MOU) developed by the model school resource officer memorandum of understanding review commission for implementation starting in the 2022 school year, together with any officer who is designated as a SRO be specially certified by the Massachusetts Peace Officer Standards and Training Commission.

VI. REVIEW AND EXAMINE ARRESTS AND USE OF DIVERSION

The Brookline Police Department utilizes diversion in lieu of arrest/court action in a variety of scenarios, in particular through the School Resource Officers, the Juvenile Detective Unit, the Walk and Talk Unit and the Crisis Intervention Team. When appropriate, it is the goal of the Department to ensure that people who need services have access to them, and when appropriate, youth, persons with substance use disorders, those with mental illness or developmental disabilities and others be diverted from the criminal justice system and referred for social service assistance, issued a behavior contract, given medical assistance, etc.

There should be more use of diversion instead of prosecution of a court case by considering such factors as the criminal record and public safety; For example, in all criminal cases except those requiring mandatory sentencing terms, the police prosecutor should first consider whether the matter may be amenable to diversion. Diversion should be considered at the earliest stages of the prosecution i.e. complaint charging or prior to and subsequent to arraignment. The police prosecutor should inform the defendant if pro se, the defense attorney if any, the judge, the assistant district attorney if any, of the potential for diversion and the terms of that diversion; and, if it seems appropriate, explicitly urge the the assistant district attorney to reschedule the arraignment for a reasonable time period to enable the defendant to engage a defense lawyer who can consider and possibly propose a diversion plan.

There should be recordkeeping on the use of diversion including the terms, compliance with the terms and outcome of the criminal matter and the racial background. Such records can be useful to determine any gaps or deficiencies in and to improve existing services for a successful diversion and monitor any racial disparity when diversion is recommended. Although juvenile diversion is formalized⁷⁵, there is no such screening tool or contract for adults.

When established, the PCAC should recommend or formulate a policy about the use of diversion in criminal matters to guide the discretion of the police prosecutor.

VII. REVIEW AND EXAMINE USE OF NO KNOCK WARRANTS

The Manual in the Search and Seizure section (General Order Number.: 23.1) sets out the law on search warrants, the procedure to follow to apply for a search warrant from the court including drafting of the affidavit in support, the procedure to execute the search warrant and the steps to follow after execution of the warrant.

⁷⁵ See the Massachusetts Arrest Screening Tool for Law Enforcement (MASTLE) form and the Youth Diversion Contract. App. 192-199.

There is oversight of and assistance to the officer who is applying for a search warrant. The Manual states: "An officer requiring a search warrant shall consult with the Commanding Officer - Platoon on Duty, or officer in charge of their unit, and obtain their advice, guidance and approval before proceeding to court." The officer is also advised if legal assistance were needed, the Norfolk District Attorney's should be contacted. The District Attorney has an office in the Brookline District Court next to the Police Department building.

There has been much public attention directed towards police serving or executing a search warrant on the wrong home such as in the case of Breonna Taylor who was killed by the police in Louisville, KY. The Manual advises and directs the Brookline officer: "In executing a search warrant when visibility is poor, such as in the nighttime, heavy rain or foggy conditions, all due care shall be taken to avoid any possibility of error"; "[u]pon arrival, again check to make certain that the premises are in fact those described in the warrant"; and "officers shall first knock, identify themselves as police officers, announce that they have a warrant to search the premises, and demand entrance" to give the officer "an opportunity to be certain that the correct premises will be searched".

According to the BPD's institutional memory, the only case of use of a no knock search warrant in the last 5 years occurred in April of 2019. The warrant was a search warrant for an address in Roslindale where the suspect in an armed home invasion was staying. During the home invasion, the alleged victim was assaulted with shotgun. The suspect party had been on a GPS monitoring bracelet at the time of the alleged crime. The affiant for the search warrant was a Brookline Detective. The no knock warrant service was executed by the Boston Police SWAT team given the nature of the crime, the use of a firearm and the court-involved background of the suspect. There was pre-planning in conjunction with the Boston SWAT that resulted in this approach. The no knock warrant was served. The suspect was taken into custody. A sawed off shotgun was recovered along with other evidence. The suspect arrested for this alleged crime was a Latino male.

For no knock warrants, if the officer has probable cause for a no Knock warrant to be issued, the officer consults with a Special Response Team (SRT)⁷⁶ Commander or Supervisor to determine if the SRT should be used in serving the no knock warrant. According to the Manual, even if the search warrant issued by the court permitted the officer not to knock, and circumstances for the no knock and announce provision are no longer present when the warrant is executed, the knock and announce rule must be followed.

According to the Manual, “Every search warrant issued and any action taken on such warrant should be recorded by issuing an incident number, logging it in the CAD system, and subsequently by submission of a written report.” In practice, the BPD does follow that portion of the Manual but is unable to retrieve the search warrant information in the CAD system, which is not easily searchable. The Brookline Municipal Court keeps a handwritten court log record, however.

The BPD could not respond to an inquiry by the subcommittee for information about the numbers of search warrants issued annually, the race of the individuals subject to the search warrant, the types of premises or evidence sought in the warrant, and number of no knock or night time warrants applied and/or executed. The BPD obtained the numbers of search warrants from the Clerk-Magistrate’s office at the Brookline District Court.

⁷⁶ “Special Response Team Officers are specially trained to perform high-risk operations that fall outside the training and capabilities of regular Officers.” “SRT Officers work as a team to bring the safest possible conclusion to the most dangerous situations while honoring the sanctity of life” See Manual, Section II, Duties by Rank and Assignment, Special Response Team Officer.

Year	Number	Number & Type of Search Warrant	Number of Unknown Type of Warrant
2015	13	13 Administrative data from keeper of records	0
2016	57	49 Administrative data from keeper of records	8
2017	49	40 Administrative data from keeper of records	9
2018	59	51 Administrative data from keeper of records	8
2019	84	76 Administrative data from keeper of records	8
2020 ⁷⁷	57	47 Administrative data from keeper of records	10

Annual number and types of search warrants by BPD from Brookline District Court records

After the Subcommittee's search warrant data request, the BPD has suggested that record keeping part of the Manual be updated so that the search warrant data can be more readily retrievable. In addition, the BPD has recommended that the Search Warrant part of the Manual be updated to include procedures for administrative warrants. With so many administrative warrants, there is no specific guidance in the Manual. The Subcommittee will undertake to propose an update to General Order Number: 23.1 relating to Search and Seizure for adoption by the Select Board.

Regarding the numbers of administrative warrants, the vast majority of them are for criminal investigations. However, the numbers are not an accurate reflection of the numbers of cases initiated by the Department. Over the last several years, the Department has seen an increase in cyber crimes and financial crimes. These types of cases rely on the Department to obtain information from a number of sources, including

⁷⁷ Through December 2, 2020

computers and cell phones containing digital data or electronically stored information. In order to investigate a crime involving threats over the internet, the Department not only has to submit a search warrant application for the device, cellphone or computer or both, but also additional applications for various applications contained on the cellphone or computer. One case could involve multiple administrative warrant applications as the person under investigation may have used various social media such as "Facebook", "Instagram", "WhatsApp" and other applications to allegedly commit the crimes. The administrative warrants to the "keeper of the records" are directed to the companies owning the specific applications used to facilitate the alleged crime under investigation.

The Police Reform Law did restrict the ability to obtain no knock warrants⁷⁸. Most search warrants can be issued by a clerk-magistrate of the court. Now a "warrant that does not require a law enforcement officer to knock and announce their presence and purpose before forcibly entering a residence shall not be issued except by a judge". The affidavit supporting the request for the warrant must: (i) establish "probable cause that if the law enforcement officer announces their presence their life or the lives of others will be endangered"; and (ii) include "an attestation that the law enforcement officer filing the affidavit has no reason to believe that minor children or adults over the age of 65 are in the home, unless there is a credible risk of imminent harm to the minor or adult over the age of 65 in the home."

The Police Reform Law requires that a "police officer executing a search warrant shall knock and announce their presence and purpose before forcibly entering a residence" unless a no knock and announce warrant was authorized. Unless "to prevent a credible risk of imminent harm", a police officer must comply with these new requirements of the Police Reform Law. "Evidence seized or obtained during the execution of a warrant shall be inadmissible if a law enforcement officer violates this section."

⁷⁸ Section 9 of Ch. 253 of the Acts of 2020 changes Chapter 276 Section 2D(a).

RECOMMENDATION

- A. Review and update, if necessary, the existing General Order Number: 23.1 relating to Search and Seizure which includes searches with a warrant to ensure that this order is sufficient to provide guidance to officers in the area of searches with a warrant, and that the Order is in compliance with any changes or recommendations that were in the Act and accepted by the Select Board.
- B. The Police Department should design a tracking system that accounts for all search warrants obtained from a court. Categories to be included are:
- a. Brookline Police case#
 - b. Date the search warrant was issued and date served.
 - c. Type of search warrant.
 - d. Type of premises or object searched.
 - e. Type of crime involved.
 - f. The object/s of the search.
 - g. Type of evidence seized.
 - h. Race and gender of the person of interest.
 - i. Race and gender of property owner /renter if different from h.
 - j. If no-knock warrant was sought, was this provision used?
 - k. If a nighttime warrant was sought, was this provision used?
 - l. Any impoundment order and its expiration date.

VIII. SUMMARY OF RECOMMENDATIONS

The following summary of recommendations is provided as an abbreviated version of the recommendations made in the body of this report. The page references associated with the recommendation will provide more information or better explanation in support of a recommendation.

- A. The Police Commissioners Advisory Committee (PCAC) proposal of the Accountability subcommittee should be adopted as soon as possible by the Select Board; the PCAC will be essential to address some of the following recommendations, which will assume that the PCAC is adopted.
- B. The PCAC when established
1. Review and investigate apparent disparities between nonresidents and residents, and between White nonresidents and Black nonresidents. P. 37.
 2. Consider solutions to increase capacity for additional data entry and generation for traffic stops, traffic crashes, and traffic enforcement within the BPD by including in the Town budget: additional staff time, additional analytical staff to focus on traffic analysis, and the addition of IT staff to the Department for database management, analysis and automation to better manage the enormous volume of data it collects and to determine if racial disparities exist in the delivery of police services and monitor racial profiling and resident versus nonresident disparity, P. 38-40.
 3. Integrate disparities data into specific policy reforms, including improving supervision, accountability, incentives, and disincentives. P. 40.
 4. Approve the funding of an updated accurate benchmark study or studies to determine the driver population estimate (DPE) for traffic stop data evaluation by means of a windshield or observational study, or crash data study, or both, to be done by an institution like Northeastern University when the traffic in and around Brookline has returned to normalcy to accurately determine the extent of disparate treatment and to measure the effectiveness of any changes in policing over time. P. 38.
 5. Revise or update Manual

- a. To weave throughout the Manual the commitment of the Department to upholding civil liberties and ensuring racial equity in its activities with mindfulness, during an officer's day to day activities, of the racial injustices and inequalities that exist for BIPOC in America today. P. 40.
 - b. To specifically review (i) General Order Number: 23.1 relating to Search and Seizure which includes searches with a warrant to ensure that this order is sufficient to provide guidance to officers. P. 54 (ii) the provisions concerning officer discretion relating to traffic citations, (iii) General Order Number 42.0 Special Operations/V.I.P. Security to ensure it is sufficient to guide the actions of the Officers during certain mass events. P. 54-55
 - c. All General Orders to be in compliance with any changes or recommendations as set forth in the Police Reform Law. P. 3, 55.
6. Review and formulate policies and criteria for the increased use of discretionary diversion, both before and after arrest, in criminal matters for both juveniles and adults to guide the discretion of the police prosecutor. P. 56.

C. BPD

1. Work with the PCAC and the Town's Community Engagement Strategist to present its extensive published racial/gender disparities data to the public to (a) explain the data and how it's used to identify and reduce racial disparities and (b) provide factual transparent information to promote trust between the BPD and the community. P. 37-38.
2. Continue to break down traffic stops, the FIs and arrests by race and by residency to address and monitor racial profiling and nonresident and resident disparities. P. 38-40.

3. Have line supervisors conduct a regular review of the activity of officers under their command relating to field interviews, moving violations and arrests with consideration given to whether there are potential disparities in their enforcement and addressing any areas of concern they find. P. 40.
4. Improve procedures for suspicious person/activity calls for dispatchers, Patrol Supervisors and officers. P. 44.
5. Design a tracking system that accounts for all search warrants obtained from the court. P. 61-62.
6. Require any outside law enforcement official assisting the BPD to conspicuously display at all times a clearly identifiable Department insignia such as a badge, patch or Department name on the exterior of any clothing, uniform or gear/equipment to enable any person to ascertain the identity of the official. P. 54-55.
7. Discuss whether to enter into a new model school resource officer (SRO) memorandum of understanding (MOU) with the school department for implementation starting in the 2022 school year together with special certification of any designated school resource police officer by the Massachusetts Peace Officer Standards and Training Commission. P. 55.

Subcommittee on Community Outreach, Youth and Non-Traditional Roles

Outline of Contents

- I. Introduction
- II. Homelessness
- III. Walk and Talk Unit at Brookline Housing Authority
- IV. School Resource Officers
- V. Crisis Intervention
- VI. Emergency Management, Civilian Mobilization and Preparedness Training
- VII. Domestic Violence
- VIII. Recommendations
- IX. Supporting Documents and Materials in Appendix D to the Report

I. INTRODUCTION

The Subcommittee on Community Outreach, Youth and Non-Traditional Roles (the “Subcommittee”) consists of the following members of the Select Board’s Committee on Policing Reforms: Bernard Greene, Casey Hatchett and Michael Zoorob and supported by Advisory Committee Member Janice Kahn and Retired Brookline Police Chief Daniel O’Leary and Office of Diversity, Inclusion and Community Relations (ODICR) staff liaison Caitlin Starr.

The Subcommittee identified the following areas of work within the Brookline Police Department as its primary focus: Homelessness, the Walk and Talk Unit, School Resource Officers, Crisis Intervention, Emergency Management and Domestic Violence.

To start, the Subcommittee would like to thank the many members of the Brookline Police Department who provided testimonials as to their work, insight into various programmatic areas, written fact sheets, educational videos and support in the compiling and analysis of data and resources. Thank you also to many members of the Brookline community who spoke at our joint hearing, responded to our survey, reached out to Subcommittee members and wrote letters and gave testimonials on their experience with the Brookline Police Department and program areas under our Subcommittee’s review. Also, thank you to staff and residents at the Brookline Housing Authority, Caitlin Starr at the Office of

Diversity, Inclusion and Community Relations, and Paul Scarborough from Town Hall for their assistance with our survey.

The following are our programmatic overviews, findings and recommendations for each of the areas based on what we learned and what we heard:

II. HOMELESSNESS

The Subcommittee of Community Outreach, Youth and Non-Traditional Roles heard from Lieutenant Jen Paster, Sergeant Casey Hatchett and Officer Joe Amendola who gave an overview of homelessness in Brookline and current support systems in place. Based on what we learned, it is clear that a more robust system needs to be put in place. Currently, the Police Department is the central location for assisting homeless on the street and for fielding and mitigating public health, sanitation and quality of life concerns of residents. The Brookline Department of Public Works has been a great assistance to the Police Department when encampments overrun an area and become a public health and sanitation issue; and the Brookline Center assists residents at risk of being homeless or those who are homeless but housed in a program. We learned that this fall, residents called the Brookline Police Department more than 100 times asking for help mitigating a situation with one specific homeless individual who was residing on the sidewalk; most calls involved sanitation issues and obstructing the sidewalk due to the collection of items the individual was accumulating.

In a recent overnight count, Brookline Police identified 11 individuals who were experiencing homelessness that night. In recent weeks, the Department has reported they have seen several new homeless individuals coming into Brookline, a couple of whom are younger adults. Officer Joe Amendola, who has served as the Police Department's liaison to homelessness issues since August 2020, has been working with the homeless in Brookline throughout the winter ensuring they have warm clothes, hats, gloves, socks, etc. He recently ran a collection to ensure he could provide warm, dry clothing to individuals in need. Officer Amendola checks in on several individuals daily and recently had success with one man who finally agreed to get help with finding housing and services. Officer Amendola is working with the Department of Mental Health and the Brookline Community Mental Health Center to access services for individuals experiencing homelessness in Brookline. He fields calls from the community regarding public health, sanitation and quality of life issues and is attempting to balance the needs of the underhoused in Brookline while addressing the concerns of impacted residents and businesses.

We recommend that the Town of Brookline develop a Task Force on Homelessness which consists of representatives of the Brookline Police Department, Department of Public Health, Department of Public Works, the Brookline Community Mental Health Center, Veteran's Affairs, the Brookline Library and a Town constable; and we are happy to report that this Task Force is now underway and has met once already. At that meeting, the Task Force attempted to identify an agency who could assume the primary lead position on homelessness issues. None of the agencies indicated they were able to do that. For the time being, the Police Department will remain the primary point of access for assistance and Officer Joe Amendola continues to work with homeless individuals and the myriad of issues they face on a daily basis until a more suitable solution is found. We also recommend that the Task Force meet regularly (such as every four - six weeks).

Increasing access to public restrooms is one concrete step the Town could take to improve the quality of life for homeless residents and mitigate some sanitation issues associated with homelessness. We explored the "[Portland Loo](#)" model of outdoor restrooms used in many cities to address the absence of restrooms for use by homeless individuals. The "Portland Loo" is marketed as a self-cleaning and highly resilient outdoor restroom facility with certain design features intended to mitigate gravity and drug use. There are multiple such restrooms in [Cambridge, Massachusetts](#), in locations with significant street presences of homelessness and shelters. Of course, the Portland Loo might also provide a useful resource for residents, employees, and customers who are not homeless. We recommend that the Task Force on Homelessness continue to explore the feasibility and siting of such public restrooms.

Additionally, we recommend that the Town fund a new staff position (full or part time, through town funds or a grant) to be the primary person to manage homelessness issues in Brookline. This position would be someone who can do wellness checks/street outreach and also long term problem solving to address both the needs of homeless individuals (who often have a multitude of medical and mental health issues) and to also address the public health, sanitation and quality of life concerns often caused by homeless encampments. Because homelessness is not a crime, and homelessness often coexists with mental health needs, it is the initial recommendation of this Subcommittee that this position sit in the Public Health Department, rather than the Police Department.

III. WALK AND TALK OFFICERS

WHAT WE LEARNED:

From the Brookline Police Department Walk and Talk Fact Sheet (see appendix):

“The Brookline Police Department (BPD) has a long history of working in partnership with the Brookline Housing Authority (BHA) and their residents. Specifically, since 1992, the “Walk and Talk” Program has been a BHA/BPD partnership in which officers are assigned as liaisons to BHA residents and staff to establish relationships with residents and assist residents and staff with problem solving, quality of life issues, and to promote safety and wellness. The ten BHA properties are located all across north Brookline. There are approximately 2,500 residents living at their properties.

“Walk and Talk Officers serve as liaisons between the BHA and the Police Department and other entities within the Town. To many residents, these officers are a reliable, trusted source of support and assistance. Walk and Talk Officers respond to direct requests for assistance and general calls for service at the ten different BHA properties and conduct follow-ups for prior calls for service which occur while they are not working. Having officers who are known to, and trusted by, many of the BHA residents helps ensure the most positive outcomes when dealing with often difficult and delicate issues that residents may contact police for assistance with.

“The Brookline Police Department’s Walk and Talk Unit consists of three highly trained and dedicated officers. The Unit works in conjunction with BHA as a whole as well as each individual property manager to collaboratively solve problems as they occur and provide guidance when necessary. They often work to connect the residents to services and resources in the community. All Walk and Talk Officers are CIT (crisis intervention) trained and are able to follow up with and assist juvenile and adult CIT clients who are BHA residents.

“In addition to working with the BHA, the Walk and Talk Unit aims to build strong bonds and connections with the Town’s youth. They do this by participating in events at Brookline High School, the Brookline Teen Center, and being visible and approachable at the Town’s various parks and playgrounds. These connections allow them to support youth who may be in need of assistance or early intervention. They regularly work with the schools, BHA families and the Brookline Teen Center to offer services and support for their youth.”

The Subcommittee's Evaluation:

The Walk and Talk Unit currently has three officers assigned – Officer Timothy Stephenson, Officer David Pilgrim and Officer Kristin Healy. These officers are assigned to the 3:30 pm to 11:30 pm shift and their time is divided between 10 properties, community events, the Teen Center, and assignments like assisting the Food Pantry, participating in events with the Special Olympics program at Brookline Recreation and birthday party car parades, pumpkin painting, library talks, etc. Over the last six months, the Walk and Talk Officers have transitioned to “soft uniforms,” which are considered more approachable, less intimidating and more functional (for pick-up basketball games, pumpkin painting, loading and unloading food at the pantry and other activities).

In the absence of the Walk and Talk program, police would not disappear from BHA properties. Those properties would be covered by the regular sector patrol officers as they are now during periods other than 3:30 pm to 11:30 pm and as they cover other neighborhoods in all parts of Brookline. During the 3:30 pm to 11:30 pm period, the BHA properties would not have the benefit of officers with specialized training, long term relationships, and the ability to handle traditional policing matters in innovative ways that can better lead to outcomes outside of the criminal justice system. Also, without the Walk and Talk officers who are able to build trust and legitimacy in the BHA community, residents may be reluctant to reach out for help or share information that may be critical to the health and safety of their family or larger BHA community.⁷⁹ At this time, residents will often share tips and information with Walk and Talk officers because of the pre-existing relationships that exist. For example, last year BHA residents called the personal cellphone of a Walk and Talk officer to provide information about a murder.

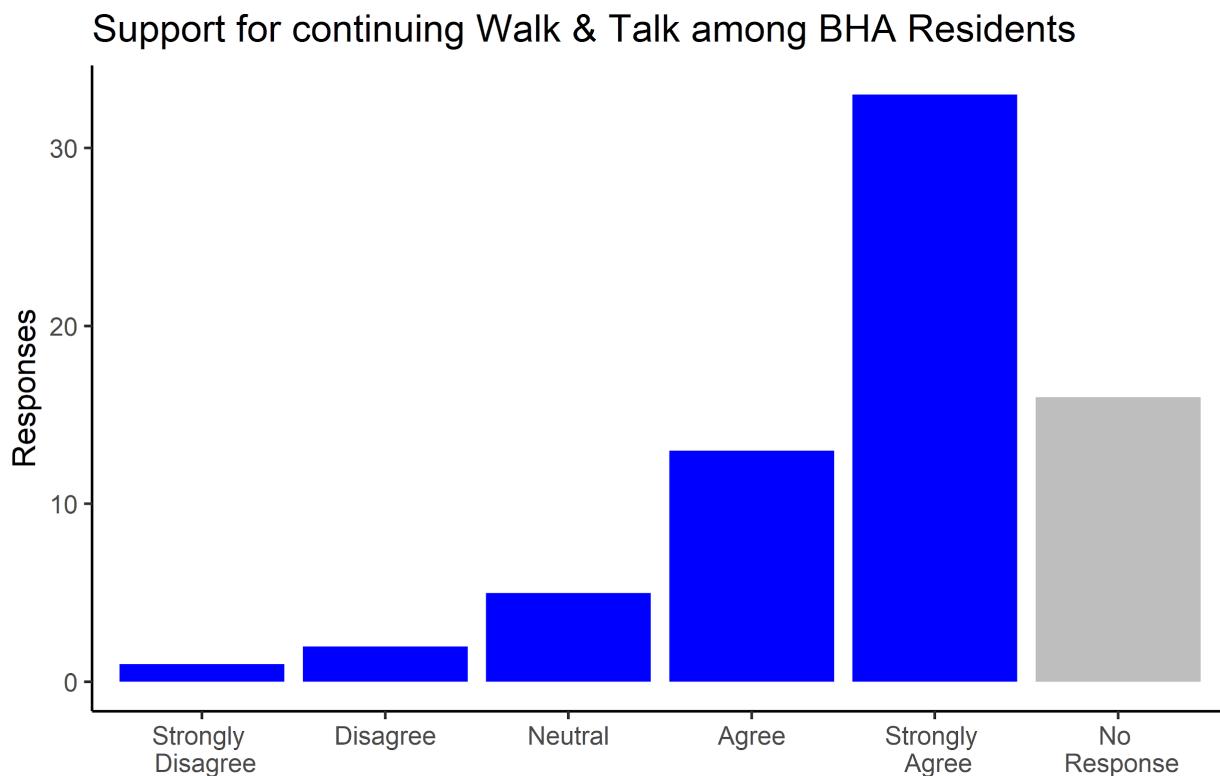
What remains outstanding in our understanding of the Walk and Talk program are the following: 1) Developing and formalizing the goals and objectives of the program. The work of the unit has organically evolved over its 30 year existence and there is no formal documentation/agreement between the BPD and BHA about the program. 2) Annually BHA gives \$15,000 to the BPD for the Walk and Talk program; and there is no formal guidance as to the uses of these funds by the BPD. 3) Lastly, during the 30 year history of the program, it does not appear that, prior to the survey developed by this subcommittee, there were any formal surveys or focus groups were held to determine if the Walk and Talk program was/is meeting the needs of residents. We want to ensure that mechanisms are instituted for BHA residents to provide feedback regularly about public safety and their interactions and relationships with the BPD.

⁷⁹ For a discussion of how contact with police in nontraditional settings can build trust, see Peyton, Kyle, Michael Sierra-Arévalo, and David G. Rand. "A field experiment on community policing and police legitimacy." *Proceedings of the National Academy of Sciences* 116, no. 40 (2019): 19894-19898.

WHAT WE HEARD:

The Subcommittee, with the assistance of the Office of Diversity, Inclusion and Community Relations (ODICR) and Brookline Housing Authority, conducted a survey of BHA residents about the Walk and Talk Unit (see Appendix). It was a paper survey, mailed to each household and translated into Haitian Creole, Spanish, Russian and Chinese. Caitlin Starr of the ODICR assisted with the collection, data entry and analysis of the returned surveys. Her analysis and the raw data are attached to this report. There were 770 surveys delivered, one to each household, and 70 returned, for a 9% response rate. Below are some highlights of survey results:

FIGURE 1: Survey results regarding continuing the Walk & Talk Program



- Of the 70 returned surveys, 54 included an answer to the question “I want the ‘Walk and Talk’ program to continue in Brookline Housing Authority” while 16 left the question blank. Of the 54 responses, 2 strongly disagreed (3.7%), 1 disagreed (1.9%), 5 were neutral (9.3%), 13 agreed (24.1%), and 33 strongly agreed (61.1%). Hence, about 85% of respondents who shared their opinion wanted the program to continue, 10% were neutral, and 5% did not want the program to continue. Responses are shown in Figure 1.

- 41 respondents indicated that they were 65+. Of these 41, 29 respondents answered the question about the program continuing; 2 strongly disagreed that the program should be continued (6.9%), 0 disagreed, 1 was neutral (3.4%), 7 agreed (24.1%), 19 strongly agreed (65.6%). Hence, about 90% of the senior respondents wanted the program to continue, 3% were neutral, and 7% did not want the program to continue.
- 24 respondents indicated that they were between the ages of 18 and 64 (5 respondents did not indicate their age). Of these 24, 22 respondents answered the question about the program continuing; 0 strongly disagreed that the program should continue; 1 respondent disagreed that the program should continue (4.5%), 3 respondents were neutral (13.6%), 5 respondents agreed (22.7%), and 13 strongly agreed (59%). Hence, about 85% of the non-senior respondents wanted the program to continue, 15% were neutral, and 5% did not want the program to continue.
- Of the 14 respondents who identified as Asian, 9 responded to the question about the program continuing; 1 strongly disagreed, 0 disagreed, 1 was neutral, 4 agreed, and 3 strongly agreed that the program should continue. Of the 6 respondents who identified as Black, 4 responded to the question about the program continuing. 3 strongly agreed the program should continue and 1 agreed the program should continue. Of the 6 respondents who identified as Latinx/Hispanic, 5 responded to the question about the program continuing. All 5 strongly agreed the program should continue. Hence, of 18 people of color who responded to the question, 1 strongly disagreed with the program continuing, 0 disagreed with the program continuing, 1 was neutral, 5 agreed, and 11 strongly agreed with the program continuing. About 90% of people of color who responded wanted the program to continue, while 5% were neutral and 5% did not want the program to continue.
- 75% of the survey respondents who provided an answer felt satisfied or very satisfied with the professionalism of the officers (n=30).
- A majority of residents agree or strongly agree that the officers have a good relationship with the residents, feel the program makes BHA communities safer, and would like to see the program continue.
- Most respondents feel comfortable by the presence of the officers in BHA housing.
- Across the board, survey respondents indicated they would like to see the presence of the Walk and Talk officers remain the same or increase at the events held within BHA residencies. Most respondents indicated they would like to see an increase in the number of officers in the Walk and Talk program.
- Qualitative data provided many positive sentiments about the officers, naming and thanking some of them individually. Some of those comments included "They are kind in times of crisis - nonjudgmental to my family" and "I think as a BHA resident,

the "Walk and Talk" program should stay because it's a great program specially for our kids. Officer Tim is a great person and the kids and us love him. All Officers are wonderful and so helpful for our community."

- There were a significant number of responses saying they were unfamiliar with the program and/or would like to learn more about it. There were also a large number of respondents who left blank questions about the program.
- In open-ended fields, some respondents indicated they enjoyed the program but wished there were more interactions and community engagement with the officers. For example, one respondent said "The officers should engage more with members of the community directly and not simply 'drive through' the BHA" and "I feel it's important for them to be just 'hanging out' in a fun friendly manor [sic] at family and youth events, so that their presence in the community isn't feared or looked down upon."

Comparing BHA resident demographics with survey respondents:

- BHA records indicate that 56% of BHA residents identify as white, 25% identify as Black/African-American, 14% identify as Asian, and 15% identify as Latino/Hispanic. Among respondents who indicated their racial identity, 51.6% identified as white, 9.7% identified as Black, 22.6% identified as Asian, and 9.7% identified as Latino (6.5% of respondents identified as something else). Hence, responses underrepresented Black and Latino residents. The Subcommittee would like to see additional outreach to BHA residents of color to further ascertain perceptions of the program.
- 66% of BHA residents identify as female and 34% identify as male. Survey respondents generally matched BHA demographics with respect to gender.
- In regard to age, 56% of BHA residents are 65 or older. Survey respondents were fairly similar to the BHA population with respect to age (63% of respondents who provided an age indicated they were 65+).

The Subcommittee noted that the survey could not capture the voices of youth living in Brookline Housing Authority or youth more generally who interact with Walk and Talk Officers. Currently, the Subcommittee, working through Caitlin Starr, is looking to interview/survey youth in collaboration with the Brookline Teen Center.

Also, given the number of respondents who had a lack of knowledge about the Walk and Talk program though answered favorably about the officers, it seems that many residents just see the Walk and Talk Officers as Officer Tim, Michelle, David and Kristin and were not aware that they were part of a named program.

Additional outreach about the program may be important so that all residents know about the multitude of resources available through the program. These issues will be addressed in our Subcommittee's recommendations.

The Walk and Talk Officers produced a video for the Subcommittee (shared with the larger committee and the community via the Department website and social media) in which they introduced themselves and the work they do. That video can be found at: <https://www.youtube.com/watch?v=1fcf34Z68uo>

Additionally, Brookline Housing Authority Assistant Director and Director of Management, Matt Baronas, was interviewed by the Walk and Talk Subcommittee of the Task Force to Reimagine Policing in Brookline on January 19, 2021. Mr. Baronas, who has worked for BHA for more than 30 years, spoke favorably of the Walk and Talk Program and the work the officers do to support residents. He outlined how the Walk and Talk Officers are part of the "social service fabric" of BHA and that the program is in line with their goal to provide residents with all the resources possible to help them overcome economic and other disadvantages. He discussed that Walk and Talk officers have helped divert youth from the criminal justice system, how they are involved with youth leadership and mentoring, and how they have needed contacts within agencies that can support residents – like the Council on Aging and Brookline Community Mental Health.

When asked about complaints he has received about the Walk and Talk program and/or Officers over the last thirty years, Mr. Baronas replied that he cannot recall any complaints from residents about the Walk and Talk program or officers – not directly from residents, not through his staff and not through a Commissioner of the Brookline Housing Authority Board. For more insight from Mr. Baronas, this interview can be viewed at: <https://www.youtube.com/watch?v=eJUwrYH7HOE>

The Walk and Talk Subcommittee of the Task Force to Reimagine Policing hosted a public hearing on the Walk and Talk Program on February 3rd at which only one resident spoke and was in support of the program, stating: "I hope that people are understanding if it wasn't for the Walk and Talk program, I wouldn't have even wanted to live here."

The Walk and Talk Subcommittee of the Task Force to Reimagine expressed concerns about the program, stating some residents feel uncomfortable and/or fearful seeing police officers. Our subcommittee appreciates that concern and agrees that residents should feel safe and comfortable in their homes. As such, our recommendations will address additional outreach to residents of color and youth to learn more about their experiences and also recommend that the BPD, working with BHA, try to open up greater lines of understanding and communication between members of the BHA community and the Brookline Police.

The Subcommittee has found the discussion around "constant surveillance by the Walk and Talk Unit" is not borne out by the actual presence of Walk and Talk officers. Currently, the BPD only staffs the Walk and Talk Unit eight out of 24 hours a day, and those officers are spread out among ten properties, the Teen Center and many other community service functions (like working vaccination clinics, birthday parades, food pantry volunteering, assisting with community events, etc). Their function is not one of "patrolling" or "surveillance" but rather responding to calls from BHA residents requesting police assistance, conducting follow-ups after such calls, and visiting with residents/families they have relationships with. Walk and Talk Officers do perform some traditional law enforcement roles; they will conduct investigations when crimes are committed on BHA property (ie, when a BHA resident is a victim of a crime or a BHA resident is committing crimes on the property) but those crimes would be investigated regardless of the Walk and Talk program. Calls for service also will be serviced at BHA properties regardless of this program. The Subcommittee did not believe that a revolving door of officers would respond to problems as effectively as do the Walk and Talk Officers, who have developed knowledge, experience, and relationships with residents.⁸⁰

The Subcommittee hears the concerns raised about the perceptions of having a police presence around the BHA community and appreciate that not all residents welcome the program. This is where we believe the BHA/BPD partnership should focus their efforts to improve the program.

WHAT WE RECOMMEND:

Based on the feedback from the surveys, interviews conducted, commentary made by residents of BHA and information learned about the functioning of the Walk and Talk Program, the Subcommittee makes the following recommendations (also included in "Recommendations" at the end of this report):

- That the BPD and BHA assess whether there is a need for additional Walk and Talk services or other social service support that would focus on supporting the 56% of BHA residents who live in elderly housing, as well as younger residents in handicap units, and to provide services during a longer period of the day.
- The Subcommittee conduct outreach to youth via Teen Center and BHA focus groups to ensure Walk and Talk/ youth interactions are meaningful/wanted and to receive input and suggestions from youth and BHA focus groups.
- A joint mission statement on the goals/objectives of the Walk and Talk Program between BHA/BPD be adopted

⁸⁰ See, for example, the discussion of "officer exceptionalism" in perceptions of police among residents of subsidized housing in Bell, Monica C. "Situational trust: How disadvantaged mothers reconceive legal cynicism." *Law & Society Review* 50, no. 2 (2016): 314-347.

- The BPD commit to annual surveys on the program and specific topics to ensure the Walk and Talk program is meeting the needs of residents (BPD to conduct with assistance from BHA and the Town's Office of Diversity, Inclusion, and Community Relations, without overburdening BHA)
- Walk and Talk and BHA management conduct focus groups with residents and increase community meetings (preferably in person, post-COVID) with residents, including youth, staff and Brookline Housing Authority Board members.
- Walk and Talk develop a brochure/handout that BHA can share with residents which introduces the officers, their services, their contact info and the stated mission statement of the program. There can also be a link to the new Civilian Feedback Form being recommended by the Committee.
- Recommend to the Town Administrator that the Town absorb the costs associated with the payment of the \$15,000 annual payment by BHA to the BPD for Walk and Talk programs, events, supplies and other expenses.

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IV. SCHOOL RESOURCE OFFICERS

WHAT WE LEARNED:

From the Brookline Police Department SRO Fact Sheet (see appendix):

"The Brookline Police Department has a long history of working with the Public Schools of Brookline to support students and to work collaboratively to ensure positive outcomes for our youth. From the early days of the DARE program to the BHS Citizen Police Academy to coaching sports and teaching in Health classes, the BPD has been an important part of educating students and other youth in Brookline for decades.

"There are eight elementary schools in Brookline and Brookline High School (BHS). Brookline Public Schools report that there are 1,781 students enrolled in the middle school grades for the 2019-2020 school year and 2,083 students enrolled at Brookline High School.

"The Brookline Police Department currently has three school resource officers (SROs) assigned to work with the eight elementary schools in Brookline and one SRO for Brookline High School. The SROs work in conjunction with school administration and guidance staff, including counselors and social workers, to support students and provide appropriate direction. They often work to connect the school and students (and their families) to services and resources in the community. They do not serve as disciplinarians nor do they enforce school regulations.

“Middle School SROs (formerly referred to as AWARE/DARE officers): Katie McCabe (& Bear, the Comfort Dog), Donal Kerrigan and Joe Amendola

“High School SRO: Kaitlin Conneely”

IMPORTANCE OF SROs

While many of the activities of the SROs in the schools may appear to be activities that can be undertaken by non-uniformed personnel, such as social workers or counselors, there are good reasons for the SROs to be involved.

Some activities are better performed by uniformed officers for the protection of the students and the community because of their training or the unique relationships the police have with other law enforcement agencies and the courts, schools, and social service agencies. Some examples are: (i) relationships with students, parents, schools, and the courts give the police, including the SROs, the ability to divert juveniles involved in minor law-breaking from the criminal justice system; (ii) using the police department’s knowledge of and engagement with criminal activity that targets youth, such as cyber-crime, predatory stalking of students, sales or distribution of illicit drugs and alcohol, gang activities, and other criminal undertakings, is only possible if police are taking the lead role and have relationships with students before problems arise; (iii) police have relationships with social service, mental health, and medical agencies and can identify and respond to minor problems early before they become significant law enforcement problems; (iv) police are uniquely positioned to provide safety and security teachings and trainings in anticipation of possible active shooter or other safety risks in the schools; and (v) police officers at school dances and other activities provide protection to students if there are problems from other students or other persons.

Non-uniform personnel, such as social workers or counselors, may be appropriate for certain other tasks now performed by uniformed officers, but only after careful review of the support needs and resources currently provided to such personnel, including police backup.

Finally, most activities of SRO officers help to develop relationships between schools, students and parents and the police department that serve general Town-wide purposes. It is a benefit to the community for students from the elementary years through high school to know and understand the work of law enforcement and develop relationships with police officers that can provide guidance and support for positive behavior.

SROs IN THE SCHOOLS

All SRO officers are National Association of School Resource Officers (NASRO), ALICE (Alert, Lockdown, Inform, Counter, Evacuate Active Shooter Training for Schools) & CIT (Crisis Intervention Team) trained:

- SROs are trained and follow up on juvenile CIT clients
- SROs continue to work with the schools, families and the Brookline Center to offer services and support for their students

School Resource Officers - Enforcement, Diversion and Arrests:

- Middle Schools – NO arrests have been made of elementary/middle school students by the SROs and two middle schoolers have been entered into the Diversion Program in the last years
- BHS – NO arrests, three youth summoned to court and ten youth diverted from the criminal justice system into the Diversion Program since March 2019 when the HS SRO Program began (March 2019)

Like the Walk and Talk Officers, the School Resource Officers have transitioned to “soft uniforms” which are considered more approachable, less intimidating and more functional (for athletics, sitting on small chairs/activity mats in classrooms, and other activities).

MIDDLE SCHOOL SROs

The Middle School SROs taught roughly 210 Aware Classes to middle schoolers last year. These classes consisted of: Cyber-Awareness, Substance Use & Addiction and Healthy Relationships

Other Middle School SRO-School involvement:

- SROs attend the Raft dances that are held once a month during the school year
- SROs participate in gym classes where they interact with students and participate in activities
- SROs attend open houses during and at the beginning of the school year
- SROs assist with the end of the year school graduations
- SROs participate in open discussion groups with families regarding vaping
- SROs have been asked to assist with grief counseling following various tragedies
- SROs are a resource for school guidance counselors and administration who have concerns about students

- SROs coordinated and delivered safety and security trainings (i.e., active shooter) for all BPS schools
- SROs have been instrumental in assisting schools with locating students who have eloped from the school campus
- SROs assist the schools with shelter in place incidents and evacuations (drills and actual)
- SROs staff the morning and afternoon traffic posts for various schools
- SROs are asked to provide assistance and support to families whose students have an aversion to attending school

Out of School Involvement:

- SROs coordinate and run an annual Summer Program
- SROs teach safety classes at daycare centers around Town
- SROs assist with Special Olympics and Recreation Department programs
- SROs have been a part of meet and greets with several programs in town including BEEP, the Rise Program, the therapeutic and adaptive learning centers
- SROs have taught classes at several religious schools in Town
- SROs have assisted staff and students at the Bay Cove Academy with several classes and behavioral issues
- SROs attend out of school events in support of their students, such as the annual Spelling Bee, Brookline Day, sporting events, student rallies, Boy/Girl Scouts, bike parades and school fun runs, etc.
- During COVID, SROs have continued to support students and their families and have worked with school counselors and administrators to address concerns they have about students

BROOKLINE HIGH SCHOOL SRO

SRO Kaitlin Conneely has been assigned to the BHS since March 2019. She has established very close relationships with students and faculty and has continued to support both during COVID. SRO Conneely's role at BHS is to work with students and staff to ensure the most positive outcomes for youth at BHS. The Memorandum of Understanding (MOU) between the Public Schools of Brookline and the Brookline Police Department is attached.

BHS SRO-School Involvement:

- Coordinating the annual BHS Citizen Police Academy
- Attending school events and activities in support of students, such as the Powder Puff game, graduation, the Lunar New Year celebration, student rallies, sporting events, etc.
- Morning and afternoon traffic posts
- Participates in regular meetings with Deans and the weekly Roundtable (a meeting of key BHS stakeholders to address emerging issues/concerns)
- Meets with students and parents/guardians to assist with concerns that they or the school may have
- Assisting with the BPD Summer Program
- Assisting with Special Olympics events and supporting athletes
- Assisting with the planning and implementation of the 2020 BHS Graduation Ceremony

STATE LAW RELATED TO SROs

The Police Reform Law replaces the current Chapter 71 Section 37P with a new section 37P. The amended law does not significantly change the status of Brookline SROs or the rules governing them.

There is no longer a requirement that communities have SROs but the “chief of police, at the request of the superintendent and subject to appropriation, shall assign at least 1 school resource officer” to serve a municipality. Once the new school superintendent is in office, the BPD should have discussions with them to go through the required steps to re-authorize the SRO program. Until then, the SRO program should continue as currently operating, but with the adjustments recommended by the Subcommittee.

Brookline’s current SROs are required to be certified by December 31, 2021 and all SRO are required to have in-service training relevant to working with youth.

Substantially all of the training requirements in the law have been a part of the training curriculum of BPD officers for many years. For example, training that addresses child and adolescent cognitive development, de-escalation techniques effective with youth, and appropriate interactions with persons on the autism spectrum and those with other intellectual and developmental disabilities.

The Police Reform Law establishes a commission to develop a model MOU, which is required to have certain provisions, many of which are in the current MOU between the BPD and the schools.

For example, provisions such as that the SROs shall not serve as school disciplinarians, as enforcers of school regulations, or in place of licensed school psychologists, psychiatrists or counselors. SROs are also prohibited from using police powers to address traditional school discipline issues, including non-violent disruptive behavior.

There has been some criticism in Brookline of SRO's carrying service weapons during their time in the schools. In the definition of SROs in the Police Reform Law there is an exemption from the provisions of chapter 269, section 10(j) (carrying a dangerous weapon on school grounds) while the SRO is serving in their official capacity. It should be noted that this exemption was also in Section 37P prior to its amendment by the Police Reform Law.

WHAT WE HEARD:

There was some confusion about the School Resource Officer program and how we have four SROs in Brookline. Three were previously titled "AWARE officers", and before that "DARE", and in March 2019 when the HS SRO position was created, the title of SRO was given to all four assigned to work with the schools because that title is more reflective as to the work they were doing - which was far more than teaching occasional classes.

The Subcommittee heard from BHS SRO Kaitlin Conneely at their meeting on November 20th. Officer Kaitlin Conneely talked about her work at Brookline High School. Members of the committee asked her questions about her work, such as what kind of issues students talked with her about, her role within the school, how she works in collaboration with other programs/administrators, if SROs coordinate with Boston PD. Subcommittee members asked Kaitlin for some examples of her work. She talked about the Diversionary Program with students and families. A copy of the Youth Diversion Contract is attached.

The Brookline Police Department website has a page on the SRO program which contains several testimonials about the work they do. Those testimonials can be found at: <https://www.brooklinepolice.com/207/School-Resource-Officers>

In his statement to the Joint Hearing of the Committee and Task Force on September 30th, Head of Brookline High School Anthony Meyer stated: "I do wish to emphasize that neither my deans nor I have heard a single complaint about Officer Conneely's work at BHS. She is committed, caring, and also able to help young people understand boundaries and ways to stay safe and out of trouble. Officer Conneely continues to collaborate with high school staff in ways that offer students diversionary paths and avoid police or legal trouble. She builds relationships with kids who don't trust easily, and that is because she is genuine and awesome. (Let me be real for a moment here: high schools are especially awesome because they see through adult BS – any and all of it – with superhero-like powers.) Our students trust Kaitlin because she is trustworthy."

The following are excerpts from a PSB Principal and Guidance Counselor as to their experience with the Middle School SROs:

Pierce School Principal Lesley Miller: "...when a child presents significant social-emotional needs that can escalate to unsafe behaviors, both officers have been willing to come to the school to provide support, safety and next steps to ensure students get the help they need from various health and social service providers. This work both fosters positive relationships between the community and the Brookline Police Department as well as provides a sense of safety to our staff and students. Especially in the culture and climate we are faced with now, this is of the utmost importance."

Lawrence School Guidance Counselor Shania Martinez: "We rely heavily on a team approach, as we all have expertise in different areas. Our classroom teachers work with a number of other adults to help provide the most robust education for the students. The team often consists of specialists within the school, but ALSO include outside providers as well. We consider outside therapists, pediatricians and the SRO's as members of our school team. For our younger students, they are so excited to have the opportunity to connect to a police officer. For our middle schoolers, they are happy to have a connection to the police. They are also very curious about the laws and benefit from having someone here who can answer all their questions."

In listening to comments made at the Public Forum of the SRO Subcommittee of the Task Force to Re-Imagine Policing in Brookline, we heard continued support from the BHS Head of School Anthony Meyer as to the presence of the SRO at BHS and how critical a member of the leadership team that officer has become. A teacher within BHS also spoke in support of the SRO program and the importance of establishing positive interactions between law enforcement and youth. Unfortunately the hearing was scheduled at 1pm on a weekday and there were no parents or students who spoke.

During the Fall, the Middle School SROs worked with the PSB K-12 Coordinator for Wellness Education, Carlyn Uyenoyama, on the delivery of the AWARE program during remote/hybrid learning. As part of that discussion, the idea to include a conversation around social justice issues was introduced by Ms. Uyenoyama as a way to address the "elephant in the room." The annual AWARE Intro letter was jointly updated to include that discussion, as well as, include COVID resources for families. It appears that the Schools and the Brookline Police recognized the importance of being sensitive to all that has transpired since last May and show their willingness to answer questions and concerns youth would have about police. That portion of the letter read: "this year AWARE Officers will also discuss issues of racial justice, policing in America and community-police relations in Brookline. We are sure your children have many questions about policing and we are prepared to have some difficult and candid discussions around

the events we have all witnessed in America this past year.” These letters were distributed to parents of 6th, 7th and 8th graders, as is done each year prior to the start of AWARE classes, along with a link to a google form where parents could provide feedback and/or ask questions.

WHAT WE RECOMMEND:

The School Resource Officer Program is a multifaceted program which supports healthy, trusting relationships between police and students and supports students making healthy, positive choices. In order to address concerns raised during this process about the SRO program, we recommend the following:

- That the School Resource Officer program remain an important part of the middle and high school programs.
- The development of a general order within the BPD that outlines the School Resource Officer program and formalizes oversight, PSB involvement and requirements/limitations of the program.
- The SROs should be included in the PSB teacher training/professional development that is relevant to student safety, racial justice, bullying and social media/online usage, and additional topics as deemed relevant.
- The SROs shall attend principal meetings at least twice per year, and additionally as requested.
- The supervisor of the SROs (Deputy Superintendent of the Community Service Division or their designee) should meet once per year with the Superintendent of the Public Schools of Brookline at least once per year.
- The Superintendent of the Public Schools of Brookline (of their designee) should participate in the interview/hiring process of SRO positions.
- The SROs should host a forum for 6th grade students entering the AWARE program at the start of the program each year.
- The SRO at the BHS should continue discussions with impacted communities at the BHS regarding the location of the SRO office.

V. CRISIS INTERVENTION

The Subcommittee of Community Outreach, Youth and Non-Traditional Roles heard from Lieutenant Jen Paster who gave an overview of the BPD’s Crisis Intervention Program.

Our Subcommittee is deferring to the Subcommittee on Mental Health and Substance Misuse report for history, operation, outcomes and suggestions for the BPD response to mental health crises and its Crisis Intervention Team program. Our Subcommittee supports the findings and the recommendations made by that subcommittee.

VI. EMERGENCY MANAGEMENT, COMMUNITY MOBILIZATION AND PREPAREDNESS TRAINING

The role of the Brookline Police Department in emergency management is critical to the prevention, response, mitigation and recovery from exceptional emergencies and critical incidents in our community. This Subcommittee, at this time, has no recommended changes to the current involvement of the Brookline Police in the emergency management system in Brookline or the administration of the Community Emergency Response Team (see CERT fact sheet in appendix), delivery of community education related to emergency preparedness, or work with local places of worship and other groups to establish safe and secure environments in our community.

VII. DOMESTIC VIOLENCE

Domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, or gender. It affects people of all socioeconomic backgrounds and education levels. It also occurs in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating as well as between family members. It is also a problem in the school with couples in non or quasi-intimate relationships.

Recognizing the danger posed to victims, their families and officers responding to calls for domestic violence, as well as the expediency with which a response is required in these unpredictable, volatile and dangerous situations, the Subcommittee does not recommend any changes to the current response protocols for the Brookline Police Department in the servicing of calls for domestic violence or serving of assistance for victims and their families. Officers are exceptionally well trained to respond to these difficult and potentially dangerous calls given their extensive training, especially in de-escalation of conflict, legal updates, tactical response and crisis intervention.

The most dangerous call a police officer responds to is a domestic violence call. The USDOJ has information that indicated nearly 40% of officer deaths relate to domestic violence calls, as discussed in the article below:

<https://www.khou.com/article/news/local/domestic-violence-calls-proven-to-be-most-dangerous-for-responding-law-enforcement-officers/285-c7fef991-320d-4d4d-9449-2ede67c10829>

The Domestic Violence Unit of the Brookline Police Department consists of a Detective Sergeant, Detective and a Civilian Advocate. The Unit regularly provides resources, support and referrals to victims of domestic violence and their families. The Unit also regularly works in coordination with the Brookline Public Schools on various issues involving students and juvenile matters. The Domestic Violence Unit also works closely with prosecutors and victim witness advocates from the Norfolk District Attorney's Office in a variety of investigations.

Some calls for domestic abuse are initiated through the 911 system, some are discovered and reported by friends, neighbors, teachers, relatives and others, and in some cases, the victim reaches out directly to the Unit for assistance/referrals, a restraining order, etc.

The Domestic Violence Unit follows up with victims to establish safety plans and coordinate further resources/supports, outside service providers, community groups. They are active participants in monthly meetings, quarterly meetings, the Brookline Domestic Violence Round Table, are members of the Norfolk County Domestic Violence High Risk Team, and establish and maintain working relationships with agencies that provide domestic violence survivor resources, area hospitals and additional community partners and resources that assist in providing safety.

Oftentimes, members of the Department or the DV unit assist in cases where there is a restraining order in effect and the defendant needs to retrieve belongings from the residence – a police officer must be present for safety and per the order of the court. The victim advocate usually coordinates with both parties and the police officer surrounding the time frame.

The following are some domestic violence related statistics for Brookline:

Domestic Violence related incidents: (*Note: not all are characterized or initially come in as domestic violence incidents)

2020 – 81

2019 – 76

2018 – 102

2017 – 84

**Also, the above figures do not reflect calls from the community inquiring about resources and victims seeking advice and information regarding the restraining orders/harassment orders and safety planning.

Restraining Orders/Harassment Prevention Orders issued out of Brookline District Court:

2020 – 92

2019 – 98

2018 – 89

2017 – 98

DEPARTMENT POLICY AND STATE LAW

The Brookline Police Department Manual General Order 33.2 outlines the policy and procedure for the Department's response to domestic violence calls.

"POLICY: Among the most difficult and sensitive calls for police assistance are those involving domestic violence. A proactive approach must focus on victim safety. The touchstone must be a policy of "zero tolerance" on all incidents of domestic violence. When responding to a domestic disturbance, officers must be both alert and impartial, and must be concerned with the needs of victims where domestic violence is apparent or alleged. At the same time, domestic violence related calls can also be among the most dangerous for responding officers, and officers must always anticipate the unexpected. What appears to be a dispute of a minor nature may quickly escalate into a conflict of dangerous proportions because of the potentially violent nature of such incidents. Domestic violence situations are often characterized by anger, frustration, intense emotion and a batterer's attempt to control household members. These feelings can easily be directed against the responding officers who can suddenly become the focus and target of ensuing violence. It is not unusual for aggressive outbursts within families to lead to serious bodily injury or even death. For this reason, whenever possible, at least two police officers should be assigned to a domestic violence situation. More information about the police response to domestic violence calls can be found at:

<https://www.brooklinepolice.com/DocumentCenter/View/942/BPD-MANUAL6282017?bidId=#page=485>

Additionally, Massachusetts State Law, Chapter 209A, section 6 has specific measures that law enforcement are instructed to take to ensure the safety of domestic violence victims from their abusers. These measures can be found at:

<https://malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter209a/Section6#:~:text=Section%206%3A%20Powers%20of%20police,means%20to%20prevent%20further%20abuse>

Subcommittee on Mental Health and Substance Use Disorders*

Outline of Contents

I. Introduction

II. Mental Health and Substance Use Disorders Systems Today

III. The Need in Brookline

IV. What Brookline Police Do Today

V. Existing Brookline Resources and Linkages

VI. Existing Emergency Response Collaborations

VII. Gaps in Aftercare

VIII. Best Practice Models from Which Brookline Has and May in the Future Borrow
Ideas Appropriate for Brookline

IX. What We Have Learned

X. Recommendations

Supporting Documents and Materials in Appendix E to the Report

I. Introduction

The Mental Health and Substance Use Disorders⁸¹ Subcommittee of the Select Board Committee on Policing Reforms is charged with reviewing and reporting on the current community resources supporting individuals in Brookline with mental health and substance use disorders during times of crisis. The Subcommittee is also charged with analyzing the role played by Brookline police during such crises and making recommendations to implement improvements at the Brookline Police Department in their provision of services for these vulnerable individuals or recommendations to engage or create alternative non-police options as appropriate. As will be apparent in this report, this will require directing some recommendations and advocacy to Town-wide and Commonwealth entities.

A key understanding that has emerged from this process is that the concept of “public safety” in Brookline needs to be broadened from Fire and Police to include Health and Human Services. The current pandemic has brought this interconnection to the forefront. A specific recommendation is to reorganize the Town’s budget book, The Financial Plan, to include Health and Human Services organizationally under Public Safety, which other communities, such as Somerville, have already done. More than an organizational change in a book, however, this is a philosophical shift that represents a rethinking about the nature of public safety itself.

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Sergeant Chris Malinn
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⁸¹Current language aims to destigmatize psychiatric disorders, emotional disturbances, addictions, substance misuse and dependence

Meetings of the Subcommittee were held Mondays at 9 a.m. on December 21, 2020; January 4, 11, 25, 2021; and February 8 & 22, 2021. In addition to Subcommittee members, contributors and members of the public, special invited guests included Elizabeth Mandell and Donna Frates from the Massachusetts Behavioral Health Partnership, Tasha Ferguson, Director of the Boston Emergency Services (BEST) Team, and Brookline Police Officer Mike Disario, Elder Liaison and Hoarding Task Force member. Additional information for this report was gathered from a meeting of the Reimagining Police Subcommittee on Vulnerable People and People in Crisis on January 7, 2021 where CAHOOTS of Eugene, Oregon presented; a conversation with Danna Mauch, President and CEO of the Massachusetts Association of Mental Health (MAMH) and co-chair of the Middlesex County Restoration Center Commission on January 10, 2021; a conversation with the BEST Team leadership on January 11, 2021; and various publications attached as appendices to this report. In addition to the above expert resources utilized, the chair of the Subcommittee is the former Massachusetts Commissioner of Mental Health and member Casey Hatchett and each of the regular expert contributors are involved in substantial ways in research, advocacy, and program implementation relevant to the work of the Subcommittee.

II. The Mental Health and Substance Use Disorder System Today

Overrepresentation of individuals with mental illness and substance misuse in the criminal justice system is well documented over the past fifty years as state mental institutions closed and individuals are preferentially served in the community since the Community Mental Health Centers Act of 1963. Despite the good intentions of restoring dignity and freedom to those with mental illness through de-institutionalization, a readily accessible, integrated and continuous network of social supports and treatments essential to support these individuals in the community eludes many who need it the most, almost sixty years after the passage of this landmark legislation. Especially those in poverty have not realized the hope and promise of a better life in the community.

Although Massachusetts has done a reasonably good job compared with other states in addressing the needs of this most vulnerable population, there is much work to be done. The January 2019 report, “Massachusetts Behavioral Health Care System: Strengths, Gaps, and Opportunities for Improvements” provides an overview (Appendix 1).

The failures in the behavioral health care system cause the needs and the suffering of individuals to be pushed “downstream”, putting local police in the position of coping with situations which require collaboration with behavioral health care providers. Although more can and should be done, BPD has recognized this need and done much to achieve this collaboration.

Still, Police dispatch, 9-1-1, has become the first and last remaining 24/7 responder when individuals are in crisis, which is a 24-hour per day problem. In Brookline, 9-1-1 dispatch receives an average of 5 behavioral health-related calls per day because people do not know where else to seek help. Illustrative of this is how calls to physician offices, or mental health providers are met with “if this is an emergency, call 9-1-1 or go to your local emergency room” Many at that point in a crisis cannot get to an emergency room, which as a result of their overcrowding is an equally inappropriate resource for those in crisis. Most mental health services are not set up with 24-hour/day access. Where does one call when they see a neighbor or family member “down” after a possible overdose? They call 9-1-1. Since 2014 all Brookline Police medical kits at the station and in all cruisers include Narcan, which has been administered by police personnel to save at least 45 lives.

Given these real shortcomings in the larger public mental health and substance misuse treatment systems, more responsive crisis response options for individuals in Brookline with mental illness and substance use disorders can only be achieved by enlisting the resources of the Executive Office of Health and Human Services, the Executive Office of Public Safety, and of course, the 24/7 staffing availability of the Brookline Police Department. Improved access to treatment for these individuals requires that the police are engaged as partners in crisis response. There are no options, which will not ultimately involve properly trained Brookline Police personnel on the receiving end of a call for help or in a face-to-face response, as we learned from speaking with multiple links in the existing network of mental health providers. The goal of this Subcommittee is to reduce or eliminate the number of times that individuals experiencing a mental health or substance misuse crisis are placed in settings that only further crises, such as an overcrowded emergency room, a jail cell, or other settings that are inappropriate or inadequate to address the person’s needs, and to ensure that the Brookline Police have the resources and public support needed to achieve that goal.

III. The Need in Brookline

In this regard, the objective of the Brookline Police Department is to supplement and tailor its police officers’ response to the specific needs of individuals who suffer with mental illness and substance misuse in our Town. Geographic considerations which need to be considered include proximity to Boston, geographic and logistical disconnection from Norfolk County operations, the differences between north Brookline, which is much more like Boston, and south Brookline, which is much like Newton, resulting in different kinds of calls for help, and the number of college communities physically connected to Brookline resources.

Data for FY2020 Jail Diversion program as reported to Massachusetts Department of Mental Health (DMH) (Appendix 2) report 349 calls requesting assistance for someone with a behavioral health crisis. This number includes seniors, but does not count ongoing contacts with existing clients of the Crisis Intervention Team. Of the 349 contacts, 58% were white, 16% were black or African American, 6% were Asian, 1% were native Hawaiian or Pacific Islander, and 19% were unknown. Of the 349 contacts, 8% were identified as Hispanic. The age distribution was 31% between the ages of 27-45 years, 18% between 46-65 years, 15% between 22-26 years, 14% 66 years and older, 11% between 17-21 years, 7% between 12-16 years. Ninety-six percent of the contacts were non-criminal.

One measure of need for intervention for substance use disorders comes from data from the Brookline Court for involuntary commitments for detoxification programs, called Section 35. In 2019 the Brookline Court filed 35 Section 35's; in 2020, the Brookline Court filed 39 Section 35's for individuals to receive involuntary treatment for substance misuse.

A review of calls to Brookline Police Department dispatch requesting community intervention (Appendix 3) further quantifies requests that may have a behavioral health component. As the data supports, a significant number of these calls are requests for well-being checks made by mental health providers and others to check on whether a person they cannot reach is safe, yet another example of how integral our Brookline police department is to a safety net for individuals with mental illness and substance misuse.

Calls to Brookline Police Dispatch requesting Community Intervention July-September 2020*:

	July 2020	August 2020	September 2020
Total Behavioral Health Calls	136	135	119
Well-being Checks	43	41	58
Psychiatric Evaluations	6	15	9
Other (e.g. medical intoxication, disturbance, etc.)	87	79	52

*These are behavioral health calls only. Total Call Center calls for 2019 were 99,303.

Each call and request for assistance made to Brookline Police is important and must be responded to quickly, even if it's a call that appears inconsequential. For example, an elderly resident may call because her cat is stuck under the bed (a true incident). What seems inconsequential may reveal a significant problem that the person can't articulate. It is not an option for the police to not respond because, even in Brookline, the police are the first and often the final link in the chain of helping agencies.

More qualitative data shows that at any given time Brookline police and its embedded social worker are involved providing ongoing assistance for approximately 150 individuals with mental health and substance use disorders in the following domains: homelessness (10), hoarding (4), elderly (27), school children (44), and emotional and addiction problems interfering with functioning in the community (63).

One concern in policing is whether or not individuals suffering from mental illness or substance misuse are snared by the criminal justice system via an initial arrest for crimes such as trespassing, public consumption, and lewd and lascivious behavior. The Subcommittee asked the Brookline Police Department to review and report on arrests over the past two years for such offenses, excluding when these charges were added on to more serious charges, so as to assess the frequency of this practice in Brookline. The results show that this is not a practice of the Brookline Police Department.

Record review of arrests over the past two years for “nuisance” crimes:

Charges	Arrests in Past Two Years
Public Consumption	0
Lewd and Lascivious Behavior	0
Trespassing	2*
Open and Gross	2 (both at the library after disturbing actions)

*Out of 14 people assessed by responding police officers and after multiple complaints regarding the same individual who was homeless.

IV. What Brookline Police Do Today

Brookline is challenged to provide rapid and responsive assistance to a steady, but relatively small, number of individuals with mental health and substance misuse problems. There are too many requests to handle without specialized services and supports, but too few to develop Brookline dedicated, affordable, extensive, freestanding response teams. To this end, the Brookline Police have creatively met this challenge by developing specialized expertise within its work force to respond to these situations and by developing strong linkages with multiple support systems in and around Brookline.

Over the past twenty years Sergeant Chris Malinn and Lieutenant Jennifer Paster have adapted, developed and implemented the Crisis Intervention Team (CIT) Model (Appendix 4), a best practice, recognizing that arrest is not always an appropriate response to someone whose behavior is directly related to symptoms of their disease. This model evolved following an incident in 1987 in Memphis, Tennessee when a Black man wielding a knife in a public housing complex was shot dead by police officers when he refused to put down his knife. The National Alliance on Mental Illness in partnership with law enforcement, families and other stakeholders developed the CIT initiative as a national model of best practice for law enforcement in their interactions with individuals with mental health and substance use disorders.

The CIT model requires intensive training of officers in recognizing signs and symptoms of mental illnesses; medication and treatment; suicide assessment and prevention; mental health issues in children and among the elderly; alcohol and drug use assessments and issues; and, most importantly, de-escalation techniques. The model includes a follow-up component to assist the client in staying connected to aftercare support services so that they may avoid involvement in the criminal justice system. The model operates to provide interception at multiple points of contact with an individual to prevent deeper penetration into the criminal justice system.

Brookline has trained 100% of its officers in CIT over the past decade and 100% of its dispatchers in mental health first aid as well as topic specific trainings to be more aware of special considerations identified by parents and family members of individuals who may come to the attention of 9-1-1 (Appendix 5). This extraordinary accomplishment and commitment to excellence contributed to the selection of the Brookline Police Department by the Massachusetts Department of Mental Health as one of five CIT Training and Technical Assistance Centers (CIT-TTAC) in the state as a resource for other police departments committed to the training of their personnel in community Crisis Intervention Teams.

As part of the grant funding this training, one full-time licensed social worker, Annabel Lane, is embedded within the Brookline Police Department. (Appendix 6)

The training completed by Brookline Police officers provides clear anecdotal evidence of better outcomes than those often reported in the national press. For example,

an incident illustrating the benefits of CIT training concerned an officer who was called to confront a man in his twenties wielding what in the dark appeared to be a knife and threatening harm in Amory Park. The officer who responded had recently completed his CIT training, including de-escalation techniques and fully utilized that training to place his cruiser between the young man and himself while still maintaining visual and verbal connection with him. After a lengthy intervention, the man continued to advance on responding officers with what appeared to be a weapon. A second officer fired a “less-lethal” round, e.g. a bean bag launcher, which subdued the man without serious injury. Although unfortunate that any round had to be fired at all, the family expressed their deep appreciation to the officer and the department for the manner in which the incident was handled. The young man was then able to get the help he needed. It turned out that the “weapon” was a stick. The officer had no time to confirm the nature of the threat and had to assume the worst. The officer credited his training with recognizing that the young man was in emotional crisis and needed an intervention other than direct confrontation whether he had a stick or a knife or other weapon.

A relevant unfortunate comparison is a recent incident in Newton Highlands, where a young man with known mental illness with a knife was shot and killed by a Newton police officer. Similar circumstances, but a tragic outcome. Training will not eliminate all tragic outcomes, but more lives are likely to be saved with training. These are complicated situations where one or more systems or individuals may have failed to have optimally responded; It is important to understand how to improve our whole community’s response, including policing, to the needs of those suffering from mental illness and substance misuse, and every person in our community can play a constructive role by insisting on “getting the facts.”

Brookline CIT training is the beginning. With time and experience, officers become specialized in working with specific populations, serving as a resource for the entire department and more importantly meeting the individual needs of Brookline residents as one Brookline mother recently wrote eloquently,

*When we think of Officer John Jennings, the word humanitarian comes to mind. What is a humanitarian?
The definition that resonates with us is: "a person who is focused on protecting human lives and preserving human dignity." This is exactly who Officer Jennings is. He cares about the welfare of others, he is selfless, genuine and takes his job very seriously. When we joined the crisis intervention team a few years ago, we had no idea that they would become part of our extended family and become such an intricate part of our daily lives. My son was introduced to Officer Jennings over two years ago and since then, the two have been inseparable. Officer John is "his person." He calls him when he is happy, sad, frustrated and literally on the brink of losing it. Officer Jennings is always there to support him, listen to him and help him calm down, on OR off duty. We have avoided numerous hospitalizations and time spent away from school, because of Officer Jennings. He possesses strong de-escalation skills and is able to immediately calm down our son, and to help him to reflect on the situation and move forward. Mental & Behavioral health are in the forefront of the challenges being faced by our population. It is beyond comforting, to reside in a community, where we have such an elite police force who embraces our loved ones and ensures that its officers are CIT trained, which is crucial in de-escalating behavioral outbursts. Officer Jennings was one of the first officers to go through the CIT training and he is an example for all.
Thank you for your kindness and all you do!*

This testimonial helps to highlight the real people with real problems who need the assistance of a safety net even if it is police officers holding that safety net. The Norfolk County CIT-TTAC recently awarded the Brookline Police Department's first Commendation for Excellence in CIT to Officer John Jennings.

Another special population which receives specialized assistance are those who suffer from substance misuse disorders. The Brookline Police Department is designated as a Police Assisted Addiction and Recovery Initiative (PAARI) site as 100% of the officers are trained in responding to individuals who are actively engaged in substance misuse. The aim is to identify and pursue non-arrest pathways to treatment and recovery.

V. Existing Brookline Resources and Linkages

The follow-up component of CIT requires strong linkages with aftercare providers and points of interventional support for individuals with mental illness and substance misuse who are coming into contact with the police. Linkages depend on relationships with limited options available. The importance of retention, longevity of service and continuity of Brookline Police personnel cannot be overstated. Relationships with community providers and with clients themselves take years to develop. These relationships are the fibers of the safety net for highly vulnerable individuals. The ongoing aspiration must be for all vulnerable individuals who come into contact with the Brookline police to be held securely by this net without discrimination or prejudice.

Brookline Police have extensive linkages with agencies, providers, and entities that are ostensibly points of intercept for individuals with mental illness and substance misuse. Of course, sustained aftercare, treatment and support are essential to decrease their risk of deeper penetration into the criminal justice system. Monthly CIT partner meetings are held in a roundtable format. Quarterly stakeholder meetings involving up to 40-50 participants are led by Annabel Lane, LICSW, Executive Director of the Brookline Police Department CIT-TTAC. The Brookline Police Department CIT relies on and expects a true community effort from each of these entities, an effort fully committed to mobilizing their resources to assist individuals in Town who suffer from mental illness and substance misuse disorders. It doesn't take a village, it takes a Town; specifically, it takes Brookline, and it is indeed a work in progress. .

The Town of Brookline has a number of local resources that are considered to be valued CIT partners and stakeholders, including the:

- Brookline Housing Authority
- Brookline School Department, including Brookline Police School Resource Officers
- Brookline Council of Aging
- Brookline Center, which graciously hosts the CIT partner and stakeholder meetings
- Brookline Health Department
- Brookline's Office of Veterans' Affairs

Brookline Police have also built strong linkages with partners in the criminal justice system, which actively participate in CIT, including the:

- Brookline District Court, which is fortunate to have Judge White, who also serves as the back-up judge for the mental health court.
- Probation, which attends CIT meetings for clients who are jointly followed with CIT.
- Norfolk County Outreach (NCO) at the Norfolk County Sheriff's Office to share overdose information to assist individuals to achieve sobriety and to remain sober
- CIT of Taunton, Brookline's original training site and partner for trouble-shooting and quality improvement
- CIT-TTAC of Cambridge and Somerville for sharing best practices and ongoing reflection and learning

CIT partners and stakeholders, who are focused on treatment and advocacy for individuals with mental illness and substance misuse, often involving assistance for those who are homeless, are also at the table. They include the:

- National Alliance for Mental Illness, Massachusetts
- Massachusetts DMH Homeless Outreach Team
- Judge Baker Children's Center and parent partner and Brookline resident, Kim Smith, who developed a "A Parent & Caregiver guide to helping your Family before, during, and after a crisis" (Appendix 7)
- Riverside Mental Health Center in Dedham, MA
- Bournewood Hospital
- Arbor-HRI Hospital

In addition to the Brookline Council on Aging, CIT partners with stakeholders who specialize in assisting the elderly, defined as anyone over the age of 55 and numbering more than 10,000 residents of Brookline. They include the:

- Brookline Senior Center
- Center Communities
- Springwell
- Jewish Family and Children's Services

Brookline's volume of referrals are currently not large enough to justify the financial support of freestanding, Brookline-exclusive comprehensive support programs for individuals with serious mental illness and addictions, such as Programs for Assertive Community Treatment (PACT) and a dedicated Emergency Service Program (ESP). Other programs not totally ruled out at this time include Community Support Programs (CSP) and Intensive Outpatient Programs (IOP). Although some of these programs may operate in Brookline-located private facilities, CIT currently must utilize programs outside and around Brookline to meet the needs of many of these individuals. The roundtable format and quarterly stakeholder meetings of the CIT-TTAC are critical to maintaining strong connections to multiple programs in the area who are serving clients of Brookline's CIT. It's important to note here that all such programs serving MassHealth/Medicaid-eligible individuals and families enjoy the federal financial participation of 75% of total costs, with the Commonwealth absorbing 25% of those costs. No expectation of county or municipal support currently exists.

VI. Existing Emergency Response Collaborations

The most frequently utilized linkage is with the Boston Emergency Services Team (BEST), one of the twenty-one Emergency Service Providers (ESPs) in Massachusetts funded by MassHealth through a management contract with the Massachusetts Behavioral Health Partnership (MBHP) and the team that serves Brookline residents. (Appendix 8). The Subcommittee spent considerable time understanding this linkage which is most aligned with emergency and crisis response triggered by a call to 9-1-1 and Brookline police dispatch.

BEST has four service components: 1) community based locations in Jamaica Plain, at Solomon Carter Fuller Mental Health Center, and at North Suffolk Mental Health Center, 2) a mobile crisis emergency response team which is required to respond within 60 minutes to calls for support, 3) adult mobile crisis intervention teams available 12 hours/day for short-term follow-up (Children's teams are available 24 hours/day.), 4) adult community crisis stabilization beds at the Solomon Carter Fuller Mental Health Center adjacent to Boston Medical Center. BEST teams now include family partners, who have lived experience with mental illness and recovery coaching services, which were added two years ago for individuals with substance use disorders.

The BEST-ESP is triggered by a call to 1-800-981-4357. A mental health clinician responds within one hour for a face-to-face evaluation of the person in crisis in any setting. Since the onset of the COVID-19 pandemic, BEST-ESP is using telephonic and telemedicine evaluation more and plans to incorporate this practice into its work following the pandemic. BEST-ESP is mandated to respond to any call initiated by

police. The BEST clinician makes a recommendation for the disposition of the person in crisis and facilitates that disposition. There are two clinical situations where the BEST clinician does not respond:

1. A co-occurring medical emergency, such as an overdose, where the person needs to be taken to an emergency room, and;
2. A situation where there is concern that the person to be evaluated may be physically violent.

The back up to the BEST-ESP in these situations is 9-1-1 police dispatch to send an ambulance and/or police officers. BEST also has the capability to co-respond with Brookline police to the site. Once the site is secure, the clinician can stay and complete the evaluation after the police leave.

BEST-ESP works well with the Brookline Police Department. Jenn Previti, Assistant Director for BEST, attends monthly meetings with CIT-TTAC and has a long relationship with Brookline CIT. Despite this successful collaboration, systemic barriers keep ultimate responsibility for safety for some of these individuals in crisis with the Brookline Police Department, the last link in the chain of the safety net.

- First, BEST can only see and evaluate individuals who consent voluntarily to evaluation. Massachusetts is a “patients’ rights” driven state. Involuntary treatment, including evaluation, can only be done when a person is at imminent harm to themselves or others, unlike in some states where involuntary treatment, including evaluation, can be done when a person would substantially benefit from the intervention.
- Second, BEST only serves those adults who are uninsured or who have MassHealth insurance coverage. With the exception of Harvard Pilgrim Health Care, most private insurers are not contracted with BEST to serve adult members. BEST is contracted to see all children regardless of insurance.
- Third, response time (~1 hour) is challenging, especially impacting the feasibility of co-response. Since a Brookline police officer responds immediately, waiting for a BEST-ESP clinician to arrive to co-respond is an imperfect option. Also, the arrival of a BEST-ESP clinician within an hour is only the beginning of the process of clinical evaluation and disposition.
- Fourth, BEST is measured on quality indicators beyond response time, including diversions from emergency rooms and inpatient hospitalizations. When a person is not faring well in the community, the Brookline CIT is most often trying to find a more suitable disposition for that individual. Incentives are not necessarily aligned between the Brookline Police CIT and BEST-ESP for disposition. Mutually respectful

relationships built with trust over many years go a long way in mitigating disagreements in dispositions when they arise.

Statutes and regulations covering protected health information govern information sharing between Brookline police and BEST. When both police and clinicians are working together with individuals, information is collected together, helpful to a common understanding of the person's situation. Some information can be shared, such as the disposition of a person that the Brookline police referred for services, albeit without any clinical information. BEST uses a web-based electronic medical record, which has alerts and flags on individuals that frequently come to the attention of first responders, so that contact information for a person's treaters can be made available for a person in crisis, and Brookline Police CIT can alert BEST when a flag would be helpful for other community interventions.

Often the police need a place to take a person for an evaluation for appropriate intervention. Although a BEST community site is available for this purpose, the closest option is the BEST office in Jamaica Plain. The most comprehensive site is the mobile crisis team office at the Solomon Carter Fuller Mental Health Center where the community crisis stabilization beds are also located. Alternatively, BEST-ESP can evaluate a person in an emergency room, if they have been transported there for stabilization, usually under a Section 12 order, signed by a police officer or a licensed mental health clinician or physician. This is also called a "pink paper" and is required for the involuntary holding of someone for evaluation when the person is felt to be at imminent harm to themselves or others due to mental illness.

There is broad recognition that the Massachusetts ESP system and its collaboration with local police departments, while generally effective, can be improved upon. Section 117 of the Police Reform Law directs the existing Community Policing and Behavioral Health Advisory Council, established in Chapter 19 (Department of Mental Health), section 25(e), to conduct a study and recommend legislation that may significantly impact crisis responses in Massachusetts. The Council's study is required to include recommendations for creating crisis response and continuity of care systems that deliver alternative emergency services and programs across the commonwealth and that reflect specific regional, racial, ethnic, and sexual orientation needs and differences in delivering such services. The Council's findings are to be submitted to the legislature no later than July 1, 2022. Once the study is completed and hearings are held, the Council then is to "report on existing and innovative crisis response models and recommend legislation or regulations to advance and strengthen non-police solutions to crisis response and jail diversion." That report and its recommendations are due no later than July 1, 2023.

VIII. Gaps in Aftercare

Once a person in crisis has stabilized, follow up with aftercare is absolutely essential for continued success. This can take many forms, including intensive 90 day community support programs (CSP's), housing assistance, counseling, recovery coaching, peer support, medication monitoring, structured day programming, and employment supports, to name a few. Given that mental illness and substance misuse affect all domains of functioning, aftercare often involves a team approach for individuals with more severe difficulties. Failure to engage with aftercare results in recurrent crises for many individuals. Such failure is due to one or more of three factors: 1) client reasons, such as paranoia about accepting treatment or fear of being separated from a beloved pet, 2) provider/treater reasons, such as failure to engage the client or missing a presenting problem which must be addressed, and/or 3) system reasons, such as lack of access due to insurance or inadequate capacity to assist someone in a timely manner. Brookline Police CIT includes a follow-up component, which attempts to address and mitigate factors interfering with a client connecting and engaging in aftercare.

CIT trained police officers are frequently the only individuals who have had continuous and regular contact with a difficult to engage individual with mental illness. One recent example of this illustrates the critical role of a police officer in Brookline encouraging a homeless individual to finally allow an officer to assist him in securing housing.

This lifelong resident, evicted from housing for complex reasons, including hoarding and sanitation, refused to be sheltered for many months, but his good working rapport with Officer Joe Amendola was ultimately the connection that he trusted enough to diminish his paranoia and accept help. Officer Amendola worked closely with the DMH Homeless Outreach Team on behalf of this Brookline resident.

The CIT includes officers experienced in working with special populations, such as elders, students, hoarders, and people experiencing homelessness. . The Hoarding Task Force utilizes a roundtable to address the health and safety issues of individuals who are hoarding and cluttering. All Brookline police officers are trained in assessment of the level of hoarding using the Uniform Model of 1-10 and instructed to contact Officer Mike Disario, Elder liaison and Hoarding Task Force representative, if any home is greater than a 5 on the scale.

Other members of the Hoarding Task Force are representatives from the Brookline Senior Center, the Brookline Center, Brookline Fire Department, Brookline Housing Authority, and Brookline Health Department.

VII. Best Practice Models from Which Brookline Has and May in the Future be Able to Borrow Ideas Appropriate for Brookline

The Hub model is an alternative law enforcement best practice to assist individuals with mental illness and substance misuse. This model, developed in Canada, is used by both the Plymouth and Chelsea Police Departments. The premise of the model is to get upstream from the person in crisis by using a whole community perspective and by using a range of community resources. The model utilizes an operational format of a roundtable of multiple agencies to assist the person. If this sounds familiar after reading about Brookline's implementation of CIT, it's because it is. Brookline has incorporated the multiple agency roundtable format into its CIT model.

CAHOOTS (Crisis Assistance Helping Out on the Streets) was developed in Eugene, Oregon in 1989 as an initiative between the White Bird Clinic and law enforcement. The funding originally came from a re-allocation of dollars from a planned budget expansion of law enforcement to the White Bird Clinic for mobile outreach teams of two, a medic and a crisis worker, to respond to urgent calls for well-being assistance. Today funding for CAHOOTS is primarily from Medicaid, and the greatest cost savings comes from diversion from emergency rooms. CAHOOTS is part of the White Bird Clinic, a comprehensive clinic for social, emotional and physical needs. CAHOOTS can be contacted directly by individuals in need of assistance, and a mobile crisis team will respond if necessary. CAHOOTS teams utilize police back up infrequently.

The primary differences between CAHOOTS and the Massachusetts ESPs is the City's direct diversion of some 9-1-1 calls to the CAHOOTS mobile response teams. In 2017, CAHOOTS responded to 17% of 9-1-1 calls. The White Bird Clinic is the backbone of CAHOOTS, providing assessment and treatment for individuals on an urgent basis. Additionally, CAHOOTS was developed by White Bird Clinic to more effectively address the nation's largest homeless population per capita in Eugene-Springfield, Oregon, many of whom are treated at the White Bird Clinic. The majority of CAHOOTS calls are to assist this homeless population.

Brookline has, comparatively, a relatively small homeless population, does not have a comprehensive mental health clinical provider partner ready to operate mobile crisis teams and a population one-fourth the size of Eugene-Springfield. Brookline has in place a working relationship with the Department of Mental Health's Homeless Outreach

Team, which is familiar with and assists the CIT in helping the approximately 10 individuals in Brookline who are chronically homeless. One consideration for Brookline would be to explore opportunities with BEST for more co-response of police officers and clinicians as Boston is doing.

Given Brookline's small volume of approximately 4-5 community assistance calls/day, including an average of 1 mental health request/day, the most cost efficient approach for Brookline may be to support 2 FTE social workers embedded in the police department.

With the upcoming rollout of the MassHealth (Medicaid) Ambulatory Care Redesign with funding for expanded emergency services and urgent care, Brookline should explore opportunities to expand co-response with BEST, which may be able to tap into these Medicaid dollars. Additionally, exploring continued grant funding for diversionary services from Massachusetts DMH to support the existing 1 FTE Social Work position could offset costs to the Town.

Restoration Centers are well-staffed facilities which offer short-term stabilization (0-3 days) for individuals in crisis and linkage to aftercare services. They have been used successfully in communities around the country as drop-off sites for law enforcement to divert from emergency rooms, jails and deeper penetration into the criminal justice system. Neighboring Middlesex County is in the process of planning for the implementation of a Restoration Center in Lowell, MA to serve the entire county (52 police precincts) (Appendix 9 & 10). The Middlesex County Sheriff, through a transfer of funds to the Massachusetts Executive Office of Health and Human Services, provided the initial funding for the Restoration Center. In order to have enough scale to support the comprehensive services required for stabilization, including an on site medical doctor, nurse, and consulting psychiatrist, the Middlesex County Restoration Center will operate 30 beds at an estimated cost of \$6.6 million dollars annually, some of which may be recovered by billing insurance, estimated at ~\$2.7 million dollars, for a net cost of \$3.9 million/year. The Middlesex County Restoration Center, like ESP crisis beds, is only for voluntary adults and cannot hold someone against their will or anyone under the age of 18. The Restoration Center will be run by a vendor who is a comprehensive community behavioral health entity with a track record of success in community linkages and crisis response. The ultimate effectiveness of the Middlesex Restoration Center will depend on the capacity of the community provider chosen to make successful aftercare linkages. The Middlesex County Restoration Center will operate in close collaboration with the designated ESP's for the area, not as a replacement.

Although the scale of a Restoration Center is much more than Brookline's volume could justify, Brookline Police Department could be a valuable "voice at the table" should

Norfolk County decide to develop such a county-wide resource. The geographic disconnection of Brookline, however, might make a Norfolk County Restoration Center a less viable option for Brookline police than a Restoration Center in Boston.

VIII. What We Have Learned *

1. Ongoing treatment services for mental illness and substance misuse are difficult to access for many individuals who need them the most due to cost, cross-systems challenges, insurance coverage limitations, fragmentation, and complexity. When these services fail to engage, hold, and heal; individuals and their families in need turn to our local police for help.
2. The reality is that the Brookline police are an integral part of the behavioral health system for Brookline residents as the only 24/7 timely crisis responders for any and all callers. The entire behavioral health system is built on the premise that there is and will be a 24/7 police response (9-1-1). Cutting into this structural beam of the behavioral health system could cause harm to many of the most vulnerable individuals with mental health and substance use disorders.
3. Brookline's volume of those experiencing behavioral health crises is too low for stand-alone, state of the art diversionary programs and too large for no re-energized specialized attention. Brookline has done a good job in addressing this with 100% CIT trained officers and 100% mental health first aid trained dispatchers, but more needs to be done.
4. Aftercare follow through is challenging due to client, provider and systemic issues. Brookline police have and must continue to initiate strategies to mitigate for all of these issues.
5. Brookline's needs are best met by programs that are tailored specifically for Brookline by adopting and adapting best practices for our own community, such as including elements of Hub in CIT or expanding co-response with BEST.
6. Solutions to improve experiences of individuals with mental illness and substance misuse with police must be done in close collaboration WITH the police, not outside or around them.
7. Success depends on continuity and relationships. Retention and promotion of Brookline police officers for long tenures in the Brookline Police Department optimizes the Town's return on its investment of the intensive and extensive training of its officers.

8. The investment made by the Town in intensive and extensive training of BPD officers and those officers' enthusiastic response to that training is the best protection against the horror stories that have caused some to want to remove police involvement from these difficult and potentially dangerous calls.

*Minutes of the meetings of this Subcommittee (Appendix 11)

RECOMMENDATIONS

1. That the Town assume the cost of training 100% of new Brookline Police officers in CIT and 100% of dispatchers in mental health first aid once the state Department of Mental Health funding, which has allowed Brookline to provide CIT training to all of its officers, ends.

2. That the Town fully fund 2 FTE social workers in the BPD, at least one of which should be licensed to facilitate signing Section 12 petitions. This increase could be timed to pick up the funding for Annabel Lane, currently the only social worker in the BPD, when grant funding for her position expires. A second position to allow for some evening and weekend coverage would expand the frequency of embedded mental health expertise in Town emergency responses.

3. That the Department of Public Health and Human Services investigate contracting with providers of clinical services to be used by the BPD for mental health or substance use crises that can receive Medicaid reimbursements where such clinical services paid by BPD could not be reimbursed.

4. That BPD Crisis Intervention Teams collaborate with BEST on additional in-service training for Brookline Police officers and dispatchers to increase utilization of telehealth options and build on telehealth utilization during COVID to assist officers in assessing whether or not mental health expertise or referral is the best disposition – especially for “on the line” cases.

5. That the Health and Human Services Department support the nascent Homelessness Task Force utilizing a roundtable model similar to the Hoarding Task Force.

6. That the Health and Human Services Department explore options with local private providers, such as The Brookline Center, to secure contracts for CSP and PACT to

improve access for these comprehensive services for individuals with complex and serious mental illnesses, particularly during non-business hours.

7. That the Town works with its State Senate and House Representatives to advocate for legislation that requires all private insurers to pay for emergency services for mental health evaluations and legislation that supports expansion of walk-in urgent mental health services.

8. That the Health and Human Services Department offers to serve as a roundtable partner on either a Suffolk County or a Norfolk County Restoration Center implementation team, once such a team is organized.

9. That the Town adopt policies, practices, and compensation that support retention of police officers to maximize the return on its investment in sophisticated CIT training and provide continuity for people suffering from mental health or substance use disorders who can be helped by properly trained CIT officers and back up social worker or other social service personnel.

10. That the Town evaluate the current operation of the dispatch center and the BPD's response to mental health 9-1-1 calls to look for opportunities for improvement, including collaboration with the Town's Health and Human Services Department.

11. That the Town's Community Engagement Strategist work with the BPD and the Health and Human Services Department on educational programs to inform the community about the essential and non-transferable role that the BPD together with its in-house social worker and other social service workers play in mental health and substance misuse crises.

12. That the Town explore options with comprehensive healthcare systems already invested in Brookline to develop a public-private partnership for the purpose of creating in Brookline comprehensive medical/psychiatric 24 hour ambulatory care services with walk-in capacity and follow-up care. For example, the Brigham and Women's Hospital has a footprint in Brookline, as does Beth Israel. Boston Medical Center is connected to Brookline through the BEST contract. These efforts would best be viewed as an economic development opportunity to meet an identified need in Brookline for aftercare services for this most vulnerable population, would build a roadmap for providing needed mental health crisis care in the Town, and would align with the Commonwealth's Roadmap for Behavioral Health Reform initiative

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13. That the Town and BPD monitor the recommendations for changes to emergency response by the Community Policing and Behavioral Health Advisory Council and prepare to implement recommended improvements in policies and procedures as they are promulgated on or around July 1, 2023.

ACKNOWLEDGEMENTS

Almas Dossa and Anne Weaver, co-chairs of the Subcommittee on Vulnerable People and People in Crisis of the Task Force to Reimagine Policing for observing our meetings and sharing their input and work from their own Subcommittee's work. Officer Mike Disario, Social Worker Annabel Lane, Sergeant Chris Malinn, former Chief Dan O'Leary, and Lieutenant Jennifer Paster of the Brookline Police Department for their honesty and many hours of assistance in gathering and sharing information about existing Brookline Police Department services. Joanna Buczek, M.D., Tasha Ferguson, and Joan Taglieri of Boston Medical Center leadership of the Boston Emergency Services Team for their collaboration and coordination with Brookline Police for many years past and ongoing and for sharing that collaboration generously with this Subcommittee. Donna Frates and Elizabeth Mandell of the Massachusetts Behavioral Health Partnership for educating this Subcommittee about the framework and program specifications for responding to behavior health crises in Massachusetts. June Binney for her tireless advocacy on behalf of all individuals who suffer from mental illness and substance use disorders. Richard Sheola for the invaluable benefit of his deep expertise and national knowledge of high quality and responsive behavioral health systems of care. Janice Kahn for her insights into health care systems in Massachusetts along with her organic understanding of how Brookline works and lives together. Residents of Brookline who took the time to attend our Subcommittee meetings and listen, learn, and ask questions.

Subcommittee on Personnel and Governance

Outline of Contents

I. Introduction

II. Governance

Weak Chief Model: Select Board Serve as Police Commissioners

Mission Statement

Accreditation

Personnel

III. Civil Service

IV. Valuing Police Department Personnel

Recruitment, Retention, and Promotions Beyond Civil Service

Officer Training

Officer Health and Wellness

V. Recommendations

Supporting Documents and Materials in Appendix F to the Report

Introduction

The Charge for the Personnel Subcommittee of the SelectBoard Committee on Policing Reform includes (1) responding to the memorandum from Town Administrator Mel Kleckner dated July 7, 2020, (Appendix 1), regarding exploring the Town's withdrawal from Civil Service for police and fire, (2) reporting on the existing governance of the Brookline Police Department and make any recommendations for changes or improvements, including options to assist the Select Board, who are Police and Fire Commissioners, in their role, (3) assessment of the Brookline Police Department's current policies and practices around health and wellness, recruitment, hiring, retention, promotions, and training and make recommendations for opportunities for improvement of current practices, and (4) findings of any intersections and subsequent considerations with regards to Chapter 253 of the Acts of 2020, "An Act Relative to Justice, Equity and

Accountability in Law Enforcement in the Commonwealth” (“the Act”) signed by Governor Baker on December 31, 2020 (Appendix 2).

Subcommittee Members:

Elizabeth Childs, Chair

Bernard Greene

Paul Yee

Regular Expert Contributors:

Michael Downey

Daniel O’Leary

Michael Keaveney

Meetings were held at 9 a.m. on October 22, 2020, November 19, 2020, December 3, 17, 30, 2020; January 14 & 28, 2021; February 4, 11, 18, 2021. (Appendix 3)

Governance

Public safety is an essential responsibility of municipal government. Police, like fire, protection is a general function of the Town of Brookline. See generally, Williams College v. Williamstown, 219 Mass. 46, 48 (1914). Police and fire protection are essential “for the protection, safety, . . . of the people”. See Art. VII of the Declaration of Rights to the Massachusetts Constitution. To implement that function, Town Meeting adopted the statutory provisions under M.G.L. c. 41 sec. 97 for a police chief on March 15, 1921. The Select Board Members were designated “Police Commissioners” under the Town General By-Laws Section 3.1.2A to preserve “peace and good order” and maintain a police force pursuant to a state law relating to the powers of a municipality, M.G.L. c. 41 sec. 21

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness. -- Preamble of the Massachusetts Constitution, paragraph 1

1. Weak Chief Model: Select Board Serve as Police Commissioners

By vote of Town Meeting on March 15, 1921, the Town of Brookline adopted what is known as a “weak chief” structure (MGL c.41, §97), thereby placing the police department “under the direction of the [Select Board].” As such, it is the Select Board, not the police chief, that is responsible for making “suitable regulations governing the police department and the officers thereof.” The principal difference in a “strong chief” community (MGL c.41, §97A) is that the police department operates “under the

supervision of...the chief of police,” who is empowered to develop and implement “suitable regulations,” subject only to approval by the Select Board. Section 97A further provides the police chief the authority to assign police officers to their “respective duties,” a power notably absent in §97. These differences “makes obvious the fact that the primary control of the police department is in the chief of police under §97A and in the [Select Board] under §97.” Chief of Police of Westford v. Town of Westford, 365 Mass. 526 (1974).

Despite these differences, the two statutes share notable similarities. For instance, both statutes grant the Select Board the authority to appoint a chief of police and police officers as well as to determine their rate of compensation. Both provide that the police chief “shall be in immediate control of all town property used by the [police] department, and of the police officers” who must obey his/her orders. Lastly, removal of the police chief and police officers “for cause” rests with the Select Board, as permitted and/or restrained by civil service law.

In principle, Brookline has a very strong version of civilian oversight of the police, including five directly elected civilians in the Select Board with broad powers. In practice, however, the Select Board has seldom exercised the full range of its civilian oversight powers with the myriad other responsibilities competing for its attention and limited resources at its disposal. The Subcommittee, therefore, recommends to the Select Board the proposed Police Commissioner Advisory Committee (PCAC) described in the report of the Accountability Subcommittee. The PCAC is designed to provide the support and assistance to the Select Board that will enable it to exercise its police commissioner powers to their fullest.(Appendix 4)

2. Mission

The existing mission statement of the Brookline Police Department had not been revised for several years. Much change and progress has been made in the Department, which was not reflected in the existing statement. After receiving input from members of the Subcommittee and the entire Policing Reform Committee, the Subcommittee proposes that the SelectBoard and the department adopt the following revised Mission Statement to more accurately reflect the work of today’s department. This statement also aligns language with The Act where appropriate.

The Police Mission:

To work in partnership with the Select Board, in their capacity as Police Commissioners, the Town Administrator and community members to ensure that all people enjoy a high quality of life without fear of crime. To work together to solve problems and provide the most responsive, highest quality, fair and impartial police service. To proactively prevent crime, maintain order, and apprehend offenders, without discrimination and in a manner consistent with the law and procedural justice. Policing in Brookline shall be conducted in a bias free manner and in accordance with state statutes.

Our Values:

The Department subscribes to the following set of governing values that state its beliefs as a police organization:

1. The two most important assets of the Brookline Police Department are our personnel and the Community we serve.
2. Excellence for the members of the Brookline Police Department is based upon fairness, integrity, hard work, and professionalism in the performance of their duties.
3. Commitment to providing the highest quality of fair, impartial and professional law enforcement with the goal of enhancing the quality of life within the community.
4. Build partnerships with residents and non-residents in order to ensure personal safety, protect individual rights, protect property, and promote individual responsibility and community commitment.
5. Secure and maintain public respect in order to fulfill the Department's duties by acknowledging that the quality of life in the community is affected by not only the absence of crime, but also by the absence of the fear of crime itself.

The Department consists of the following seven subprograms:

1. The **Administration and Support Division** provides overall control of the functions of the Department. It maintains records, provides upgrades in communications and technology equipment and will continue to improve all monitoring and accountability processes to ensure fair and impartial policing takes place. It also includes the Public Safety Business Office, a group responsible for all financial and budgetary matters for both the Police Department and the Fire Department. This Division also provides oversight and direction in implementing the recommendations of committees established by the Select Board or Town Meeting to improve public safety in Brookline or to aid the Select Board in carrying out its role as Police Commissioners.
2. The **Patrol Division** continuously patrols all sectors of Town while providing a variety of public safety services. Their efforts also serve as a deterrent to criminal activity. The Patrol function is vital and, for that reason, the Chief has directed that there be a minimum staffing policy maintained daily.
3. The **Criminal Investigation Unit** is responsible for the investigation of all violent crimes, including murder, rape, armed robbery, assault, and narcotic violations, and maintains the safety of all evidence. The evidence officer is responsible for distributing and maintaining all lethal and less than lethal weapons and related equipment.

4. The **Community Services Division** is charged with facilitating a spirit of cooperation between members of the public and the Department that helps to enhance the quality of life for all individuals. Housed within this Division is the Elder Affairs Officer, School Resource Officers, Walk and Talk unit, the Crisis Intervention Team (including a grant funded social worker) and the Department's Training and Accreditation Unit which is responsible for training officers in policies and procedures including the Use of Force and De-escalation, training in the safe use of all issued equipment, state mandated trainings and various forms of elective trainings that officers are sent to.
5. The **Traffic and Parking Division** is responsible for educating the public and enforcing laws and regulations relating to the safe operation of motor vehicles in Brookline.
6. The **Public Safety Dispatch Division** is responsible for handling and dispatching all police, fire, and ambulance calls, including E-911.
7. One patrol officer serves as the Town's **Animal Control** officer. The Animal Control officer normally works five days a week. All Brookline Police Officers are responsible for enforcing the Town's animal control laws, and will continue to do so when the Animal Control officer is off duty.

Additionally, this Subcommittee recommends that an oath to uphold the United States Constitution be included in the swearing in of each new police officer.

3. Accreditation

The Brookline Police Department has been state certified since 2010 and accredited since 2013, one of only 91 community police departments in Massachusetts which are accredited. The process of achieving accreditation resulted in important changes in the department, particularly around updating policies and procedures, such as the Use of Force policy. This intensive effort assists the department in codifying its professional standards. Although there is national accreditation, it is most appropriate for large urban police departments.

The Brookline Police Department already meets the certification standard set forth in the Act, which is the penultimate step towards accreditation. Section 30 of Ch. 253 of the Acts of 2020 inserted an entire new chapter 6E to establish the 9 member Massachusetts Peace Officer Standard and Training Commission (MPOSTC). Although most of this chapter refers to certifying and decertifying police officers, the chapter does specify that every police department must be certified in accordance with the Act. The division of police certification in consultation with the municipal police training committee shall establish "minimum certification standards for all law enforcement agencies that shall include, but shall not be limited to, the establishment and implementation of agency policies regarding: (i) use of force and reporting of use of force; (ii) officer code of conduct; (iii) officer response procedures; (iv) criminal investigation procedures; (v) juvenile operations; (vi) internal affairs and officer complaint investigation procedures; (vii) detainee transportation; and (viii) collection and preservation of evidence." (Section 5(b) of chapter 6E).

PERSONNEL

Personnel make up 92.3% of the police department budget. Proposals to reduce the budget threaten hiring and retention. Reductions most impact younger, more diverse, and more recently hired officers.

III. Civil Service

The Massachusetts civil service system was established in 1884 to assure that public sector jobs were awarded based on merit and not political patronage. The civil service law, Massachusetts General Law Chapter 31, is therefore designed to assist town, city, and state government in Massachusetts to recruit and hire the most talented personnel. The purpose of this report is to explore whether the civil service system continues to meet its intended objective and the needs of the Town of Brookline and make a recommendation as to whether the Town should consider revoking civil service coverage as it pertains to personnel in the Brookline Police Department.

1. Civil Service in the Town of Brookline

Chapter 267 of the Acts of 1894 extended the provisions of the state civil service act to towns having a population of twelve thousand or more residents. Through this local option statute, the Town of Brookline accepted the civil service system by vote of Town Meeting in 1894.

Since acceptance, the civil service status of Town employees has largely remained static aside from a few minor changes such as the exemption of the Chief of Police in 1992 (after a similar vote failed Town Meeting in 1973). In 2002, however, Town Meeting charged the Human Resources Board to conduct a comprehensive study of the civil service system. The result of that study culminated in a home rule petition to the state legislature seeking to remove all Town positions from civil service except for police and fire. The law passed the legislature in 2010.

Presently, police and fire remain the only Town departments with employees covered by the civil service system. Specifically, civil service coverage extends to all police department personnel holding the rank of Police Officer through Lieutenant.

2. Revoking Acceptance of Civil Service Statute

MGL c.4, §4B, governs how the Town can revoke civil service coverage for police personnel should it choose to do so. Essentially, revocation is accomplished by engaging the same procedure used to accept/adopt in 1894 – by vote of Town of Meeting – or by special home rule legislation. The law further provides that revocation shall not affect the civil service rights of existing employees. Rather, all new hires will not have civil service rights upon entering their employment with the Brookline Police Department.

Additionally, the impacts of revoking the civil service system must be bargained with the Brookline Police Union prior to implementation. Required bargaining subjects include hiring and promotional processes, employee discipline,^[1] and layoffs and recalls. William Brooks (“Chief Brooks”), current Chief of Police in Norwood and former Deputy Chief in Wellesley, was responsible for overseeing the revocation of the civil service system in both communities. Chief Brooks found it extremely valuable to begin communication with the union as early as possible.

3. The Current Civil Service System for Police Department Personnel

a. Police Entry-Level Examinations & Hiring Under Civil Service

Every two years (odd years), the Commonwealth’s Human Resources Division (HRD) administers entry-level examinations for the rank of police officer. The examination consists of multiple-choice questions, broken up into three sections:

- Ability Test – Designed to test a series of abilities, such as written comprehension, problem solving and sensitivity, and reasoning.
- Work Style Questionnaire – Measures certain motivational, value-related, and attitude characteristics.
- Life Experience Survey – Assesses characteristics of the candidates’ past history and experience.

HRD then grades the examinations, issues scores to the candidates, and establishes a statewide Eligible List of candidates with a passing score of 70. Candidates are ranked on the Eligible List in accordance with MGL c.31, §26, as follows:

1. Sons or daughters of deceased police officer
2. Disabled Veterans
3. Sons or daughters of police officer permanently and totally disabled in the line of duty
4. Veterans
5. Widows or widowed mothers of veterans who were killed in action or died from a service-connected disability incurred in wartime service
6. All others, in order by examination score

HRD maintains the Eligible List until the next examination is administered and a new Eligible List is established.

When the Town seeks to hire entry-level police officers, it submits a Requisition to HRD indicating the number of vacancies it wishes to fill. In turn, HRD issues a Certification List of candidates based on a $2n+1$ formula, with “n” equal to the number of police officers the Department wishes to hire. For example, if the Department wishes to hire 3 police officers, HRD will issue a Certification containing 7 candidates.

HRD ranks candidates on the Certification List as set forth above, though it must also give preference to Town of Brookline residents (MGL c.31, §58). To qualify for the residency preference, candidates must demonstrate they have lived in the Town of Brookline for the entire twelve-month period immediately preceding the date of the entry-level examination. The residency preference makes it extremely difficult, if not impossible, to hire non-resident candidates.

Hiring a candidate ranked below another candidate on the Certification constitutes a bypass under civil service law. When bypassing a candidate, the Town must first notify HRD of the reason(s) for bypassing the higher-ranked candidate. The Town cannot move forward with the bypass unless and until it receives HRD's approval. Untruthfulness, failure to meet residency requirements, criminal history, and unsatisfactory employment history represent examples of common bypass reasons. Bypassed candidates have the right to their non-selection to the Civil Service Commission.

Police departments seeking to increase workforce diversity may ask HRD to issue a "special certification" based on race, color, national origin or sex. However, HRD must first substantiate, in writing, that "the previous practices of the department and/or said appointing authority with respect to the filling of such position or positions have discriminated against members of a group...on the basis of race, color, sex, or national origin..." Personnel Administration Rule ("PAR") 10.^[2]

b. Consent Decree Hiring in the Brookline Police Department

In the 1970s, the civil service system was the subject of lawsuits brought on by African-American and Latino candidates for public safety jobs in a number of cities and towns, including Boston and Brookline. The lawsuit claimed that the civil service examinations had the effect of discriminating against non-whites. Ultimately, municipalities entered into consent decrees that governed police and fire hiring for several decades. The consent decrees required inserting the name of a minority candidate at the top of the list and every fourth slot from there on (e.g. one minority candidate, three white candidates, one minority candidate, three white candidates, etc.).

Consent decrees led to the desired result of increasing the non-white hires in police and fire departments across the Commonwealth. In November 2002, a federal judge ruled that the consent decree system had met its stated goal of having the percentage of African-Americans and Latinos in the police and fire workforce correspond with the percentage of African-Americans and Latinos in the general population.

BPD hired its first African-American officer in 1972. BPD's first African-American Lieutenant, who also served as the head of the Police Union, recently retired from BPD.

Accordingly, the Brookline Police Department stopped following the consent decree hiring procedures in September 2003. Chief O'Leary was happy with the progress made under the consent decree and pushed to continue the hiring practices, but his

efforts were denied. Alternatively, Chief O’Leary sought to expand residency preference to Brookline High School graduates, including METCO students. The effort passed Town Meeting, thus requiring filing a home rule petition for approval by the state legislature. For unknown reasons, the measure stalled in the State Senate.

In the fall of 2020, the City of Boston’s City Council passed a similar measure also requiring approval from the state legislature.

c. Hiring in the Brookline Police Department

The BPD is currently comprised of 127 sworn officers, the breakdown of which is as follows:

- White Male: 83 officers – 65%
- White Female: 13 – 10%
- African American Male: 7 – 6%
- African American Female 1 – 1%
- Asian Male: 11 – 9%
- Hispanic/Latino Male: 11 – 9%
- Hispanic/Latino Female: 1 – 1%

By Rank:

- 5 Deputy Superintendents: All white males
- 11 Lieutenants: 10 white males, 1 white female
- 16 Sergeants: 14 white males, 1 white female, 1 Asian Male

Further, the Department hired a total of fifty-six (56) police officers over the past ten years.

- White Male: 28 officers – 50%
- African American Male: 8 – 14%
- White Female: 7 – 12%
- Asian Male: 5 – 9%
- Hispanic/Latino Male: 5 – 9%
- Hispanic/Latino Female: 1 – 2%
- African American Female: 1 – 2%
- West Indian Male: 1 – 2%

During that ten-year timeframe, six Brookline dispatchers were hired as police officers, five of which were white males and one was a white female.^[3] The Department hired five officers – two White males, one African American male, one Asian male, and one Hispanic/Latino male -- who were previously employed by the Town as Meter Collectors.^[4]

d. Norwood Police Department Hiring Post-Revocation

Chief Brooks indicated the greatest benefit of hiring entry-level police officers outside of the civil service system is the marked increase in the candidate pool. Like the examination schedule under civil service, Norwood (and Wellesley) continues to administer a multiple-choice examination for entry-level police officers every two years. Norwood PD engages an outside vendor to administer the examination, the cost of which is offset or paid by examination fees. Norwood's examination is similar to that offered by civil service in that it consists of multiple-choice questions, with the passing score set at 70. Norwood's hiring policy (negotiated with the police union prior to revocation) sets forth minimum qualifications for appointment, including possessing an Associate's degree or 60 credits towards a Bachelor's degree.^[5] A High School diploma is required by civil service law.

On average, 150-200 people sit for the Norwood examination. No longer restricted by the 2n+1 formula, the pool of candidates is made up of all persons who achieve a passing score. When hiring off Certification Lists issued by HRD, Chief Brooks was not confident that he was receiving the best possible candidates for his department given that he received just 3 names for every vacancy.

Additionally, the candidate pool is not ranked to prioritize residents. Per policy, resident status is merely a factor to consider when selecting candidates for interviews.^[6] Residency preference under civil service rules is also somewhat of a misnomer. For instance, a person living in an apartment in Norwood for just one year prior to the date of examination is entitled to the residency preference, whereas the preference will not be given to a lifelong resident who moved away (for whatever the reason may be) just prior to the examination.

Finally, Chief Brooks has discretion to choose the best fit for his department without having to consider defending a time-consuming bypass appeal if he selects a candidate with a lower examination score.

Chief Brooks also highlighted the quick turnaround in hiring entry-level police officers outside of the civil service system. With access to the candidate list at all times, Chief Brooks can begin the hiring cycle immediately and typically fills vacancies within a few weeks, if not days. Under the civil service system, the time it takes to complete the hiring cycle depends on HRD to issue the Certification List and approve appointments and bypasses. That process can last anywhere between several weeks to a month or more.

The transition away from civil service hiring rules clearly affords a much greater degree of flexibility and discretion to select police officers based on merit and the needs of the department and community. However, should the Town of Brookline choose to go the route of Norwood and Wellesley, it must establish policies to ensure that hiring

decisions are made for those reasons only, and not for any illegitimate reasons such as political patronage.

e. Police Promotional Examinations and Promotions Under Civil Service

The civil service promotional process is largely the same as the entry-level process, starting with a multiple-choice examination administered by HRD, typically every two years. HRD generates an Eligible List of passing candidates ranked by score. Unlike the entry-level process, HRD distributes the Eligible List to the Appointing Authority and it is the Appointing Authority's responsibility to create Certification Lists when hiring for promotion.^[7] Finally, candidates have bypass appeal rights to the Civil Service Commission if someone with a lower score is promoted.

Appointing Authorities are permitted to depart from HRD-administered promotional examinations by contracting with outside vendors to administer an Assessment Center, which typically include multiple-choice questions, an oral question and answer session, and a section of questions prompting written answers. Some communities have instituted Assessment Center examinations for upper-level management positions (i.e. Deputy Chief) while retaining the civil service examination for lower-level promotions. Appointing Authorities must bargain the impacts of transitioning from civil service promotional examination to an Assessment Center.

The Norwood PD conducts an Assessment Center promotional examination, organized as described above (multiple-choice questions, oral question and answer, written responses) every two years. Per the Town's promotional policy,^[8] selection is based on the following criteria:

- Job-related experience
- Performance Evaluation
- Supervisor evaluation of employee's promotion potential
- Score on promotional examination
- Interview performance
- Sick leave record
- Education
- Training and education through career development
- Disciplinary record
- Attitude toward the department and police work
- Work ethic and initiative

As with entry-level hiring, Chief Brooks is afforded the discretion to promote officers he finds to be the best fit for the job, based on criteria that he developed. He is not bound by examination scores nor must he secure HRD approval of bypasses before moving forward in the process.

According to Chief Daniel O'Leary, the Brookline Police Department has experienced a decline in officers sitting for promotional examinations over the last several years. Chief

O'Leary believes the decline may be due to the thin pay scale gap between Brookline police officers and their superiors, which disincentivizes employees from taking on the extra responsibilities that come with being a supervisor. Additionally, with the promotion there is a high probability of a new work shift for the individual just promoted. Finally, the promotion process is a significant investment of time and money by the officer for books, the exam itself, and preparation courses. The Town could consider subsidizing this cost to increase numbers of officers taking the exam. Additionally, the Department could explore sponsoring a study group for exam preparation, similar to how it supports a study group on the policies and procedures of Brookline Police for the Civil Service exam.

f. Discipline

Tenured civil service employees may only be disciplined (suspended or discharged) for "just cause." If the discipline is greater than a five-day suspension, the employee is entitled to a full hearing before the appointing authority (or hearing officer designated by the appointing authority). For all suspensions for a period of five days or less, the appointing authority may impose such discipline without holding such hearing. See *MGL c.31, §41*. In both cases, however, employees have a right to appeal the disciplinary action to the Civil Service Commission where they will be given a full hearing before a member of the Commission. See *MGL c. 31, §43*. Finally, both the Town and employee may appeal the decision of the Commission in superior court. See *MGL c. 31, §44*.

Employers revoking civil service must bargain over impacts involving the disciplinary process. The Town's CBA with the Brookline Police Union, however, already contains a "just cause" provision in the Management Rights section. Through the grievance procedure of the CBA, employees may appeal disciplinary action to a full hearing before a neutral arbitrator. The arbitrator's decision is binding on the parties and very rarely are those decisions appealed. Only under exceptional circumstances will the courts intervene and overturn an arbitration decision.^[9]

g. Layoff & Recall Procedures

Civil Service law requires layoffs to be implemented in order of seniority/length of service in the title subject to layoff. See *MGL c.31, §39*. The computation for length of service, however, is the total years of service in the Department. See *MGL c.31, §33*. For example, if an employer were to lay-off a group of Lieutenants (as a means of achieving the requisite savings more quickly), the employees chosen for lay-off would be those with the least years of service in the police department. Time spent in the Lieutenant position is irrelevant. However, the employees subject to lay-off may exercise their right under *MGL c.31, §39*, to seek demotion to the next lower title (Sgt). That process typically plays out until it gets down to police officers most recently hired.

Additionally, employees have the right of first refusal to the position from which they were laid off. Employees retain their “recall” rights for ten years. As such, vacancies must be offered to laid-off employees before employers may look to hire from a new Certification List.

Employers revoking civil service must bargain over the impacts of transitioning away from the layoff and recall procedures as required by civil service law. This provides the employer the opportunity to gain discretion in terms of the procedures to implement layoffs and what recall/reinstatement rights should attach, if any.

h. Impact Bargaining

MGL c. 150E does not require bargaining over the decision to petition for revocation of the civil service statute but does require bargaining over the impact of the revocation on employee working conditions. *NAGE v. Labor Relations Commission*, 17 Mass. App. Ct. 542 (1984); *Weymouth School Committee v. NAGE*, 9 MLC 1091 (1982). As discussed in this memo, impact bargaining issues in the context of civil service revocation typically include seniority, layoff and recall procedures, discipline and promotions.

Under MGL c.150E, the parties have a duty to bargain in good faith, meaning that they must enter negotiations with a sincere desire to reach agreement. However, the law does not require the parties to make concessions, particularly on strongly held positions, nor does it require that the parties reach agreement.

i. Civil service commission study

The recently enacted police reform bill (Chapter 253, Acts of 2020) establishes a “special legislative commission to study and examine the civil service law, personnel administration rules (HRD regulations to enforce the civil service law), hiring and by-laws for municipalities not subject to the civil service law and state police hiring practices.” Specifically, the commission is tasked with reviewing the “employment, promotion, performance evaluation and disciplinary procedures for civil service employees, including, but not limited to:

- (i) the hiring and recruitment processes for civil service positions;
- (ii) use of civil service eligible lists, the statutory merit preference status and the hiring from those eligible lists;
- (iii) all current civil service examinations and the use of the examinations for hiring and promotions;
- (iv) collective bargaining agreements by unions;
- (v) disciplinary and appeal procedures as applied to civil service employees; and

- (vi) identifying any barriers that exist in hiring, recruiting or promotion civil service employees.

The commission must submit a report detailing its study and any recommendations on or before September 30, 2021.

The Act established “a special legislative commission to study and examine the civil service law, personnel administration rules, hiring procedures and by-laws for municipalities not subject to the civil service law and state police hiring practices.”^[10] The commission consists of 29 members from different constituencies such as the police and firefighters’ union, ACLU, NAACP, chiefs of police and fire departments, state police, the Massachusetts Association of Minority Law Enforcement Officers, the civil service commission, the secretary of administration and finance the Massachusetts Bar Association, secretary of public safety and security, veterans’ groups, the Massachusetts Municipal Association, state legislators and the attorney general. The commission will study the current civil service system. “The commission shall study the employment, promotion, performance evaluation and disciplinary procedures for civil service employees, including, but not limited to: (i) the hiring and recruitment processes for civil service positions; (ii) the use of civil service eligible lists, the statutory merit preference status and the hiring from those eligible lists; (iii) all current civil service examinations and the use of the examinations for hiring and promotions; (iv) collective bargaining agreements by unions; (v) the disciplinary and appeal procedures as applied to civil service employees; and (vi) identifying any barriers that exist in hiring, recruiting or promoting civil service employees.”

The commission will study cities and towns without civil service. “The commission shall study the employment, promotion, performance evaluation and disciplinary procedures of municipalities not subject to the civil service law, including, but not limited to: (i) the hiring and recruitment procedures and by-laws for municipalities; (ii) all examinations administered by municipalities and the use of the examinations for hiring and promotions; (iii) the use of minimum eligibility guidelines and hiring qualifications or preferences; (iv) collective bargaining agreements by unions; (v) the disciplinary and appeal procedures as applied to municipal employees; and (vi) identifying any barriers that exist in hiring, recruiting or promoting municipal employees.”

The Act attempts to address the issue of diversity by considering the feasibility of a state office of diversity and a diversity officer in every town and city with a fire and police department. “The commission shall evaluate the feasibility of creating a statewide diversity office within the executive office of administration and finance to establish affirmative action plans and guidelines for municipalities, oversee the implementation of these plans and guidelines and monitor noncompliance. The commission shall examine the feasibility and cost of hiring or appointing a diversity officer for every city or town with a municipal police or fire department.”

The commission will submit a report of its study and any recommendations, together with any draft legislation necessary to carry those recommendations into effect on or before September 30, 2021. The report will contain “recommendations for changes to the civil service law to improve diversity, transparency and representation of the community in recruitment, hiring and training of civil service employees, including, but not limited to, any changes to civil service exams, merit preference status, eligible lists and appointment from eligible lists by hiring authorities.”

Also, for those municipalities not in civil service, the report will have “recommendations to improve diversity, transparency and representation of the community in recruitment, hiring and training for municipalities not subject to the civil service law and for the department of state police.”

^[1] The Town’s collective bargaining agreement with the Brookline Police Union has a provision stating that the employer must have “just cause” to impose discipline, which is a uniform standard in labor relations. Thus, the parties have a head start on that front.

^[2] Personnel Administration Rules constitute regulations, written by HRD, enforcing the civil service law.

^[3] Five civilian dispatchers went on to become Brookline firefighters (three white males and two African American males).

^[4] Two Meter Collectors went on to become Brookline firefighters (one white male and one Hispanic/Latino male).

^[5] The Norwood PD hiring policy allows candidates to substitute their veteran status for education requirements.

^[6] Other factors include education levels, military service, prior law enforcement experience, prior public service and second language proficiency.

^[7] HRD delegated this responsibility to Appointing Authorities about 10 years ago.

^[8] Promotional hiring policy was also negotiated with the police union prior to revocation.

^[9] The strong public policy favoring arbitration requires the courts to uphold an arbitrator's decision even where it is wrong on the facts or the law, and whether it is wise or foolish, clear or ambiguous. See *Plymouth–Carver Regional Sch. Dist. v. J. Farmer & Co.*, 407 Mass. 1006, 1007 (1990),

^[10] Section 107 of Ch. 253 of the Acts of 2020.

IV. Valuing Police Department Personnel

The Brookline Police Department has 180 FTEs. With a total FY22 budget of \$17,493,030, fully-loaded salaries account for \$16,137,779 or 92.3% of the FY22 police budget. The Brookline Police Department serves the entire Brookline community and accounts for ~5.3% of the Brookline General Fund.

A. Recruitment, Retention, and Promotions: Considerations Beyond Civil Service

1. Recruitment

The Department understands the importance of attracting and retaining qualified people to provide high quality police service to the Brookline community. There is also a great need to ensure the Department accurately reflects the community they serve. In particular, it is important to recruit officers from Brookline. Current efforts at recruitment are extensive and spread across many areas. For example, officers have a presence in town schools and the high school police academy is always well attended. Many types of internships take place with area college students, including Northeastern University Co-op program. Some non-police jobs in the department are filled with young people who want a career in policing. These jobs provide a bridge that allow people to learn about the department while waiting to become eligible to go through the hiring process. There are many other forms of community outreach done by members of the department that assist them in the recruitment of personnel. Attached in the appendix is a fact sheet on recruitment efforts as well as General Order Number:22.1 Recruitment and Selection of Personnel. (Appendices 5 & 6)

The current civil service system is weighted for veterans as a preference and not for diversity according to Anna Braga. Brookline has such a low salary structure that it is not conducive to recruiting minority or women officers who are in very high demand by other police departments to fulfill the goal of a diverse police force. Even if a minority or woman officer is recruited and hired, that officer would be considered underpaid in comparison to other communities. The standard of living especially housing cost is high in Brookline, such that the officer would have difficulty living in the town (Appendix 7). Notwithstanding these impediments, the BPD has been able to recruit and hire some minority and women officers and has been more successful than a neighboring community with a much larger police force who has only one minority officer on the entire force.

As part of the Police Department's efforts to actively recruit quality candidates for future police officer positions, the Department may want to consider initiating a Police Cadet Program. This program provides an opportunity for residents who are interested in a career in law enforcement to join the Brookline Police Department. This program would allow young residents to experience what it would be like to enjoy a career in policing with Brookline. These paid civilian positions, would provide a cadet with valuable on the job training in a variety of assignments within the Department. The cadets would also work with various groups in town which will instill in them the values of community policing. A program such as this would also assist the Department in its efforts to recruit a diverse workforce that reflects the community it serves.

The Boston Police Department has a 2-year cadet program which can be used as an example for defining how best to set up a program that meets the needs of the Brookline community.

Boston eligibility requirements are as follows:

- a. Between the ages of 18 and 25
- b. Have a high school diploma or GED
- c. Be a current resident of Boston and must have maintained a Boston residency for the last five years
- d. Be a citizen or naturalized citizen of the United States
- e. Have a valid Massachusetts driver's license (good driving record preferred)

In Boston, cadets may also receive preference on the list of eligible candidates for a police recruit class if:

- a. They complete the two-year cadet program, and
- b. They pass the Civil Service Police examination.

It is important to note that Boston's model is being shown as an example only. Brookline, if it decides to explore this option, can determine their own eligibility requirements. Furthermore, in order to gain a hiring preference for cadets, it may be necessary to gain approval through a home rule petition to the Legislature, Civil Service or both.

The Act created a 21 member commission to study the establishment of a statewide law enforcement officer cadet program."^[1] The commission would evaluate the establishment of a statewide law enforcement officer cadet program through which all law enforcement agencies, such as local police departments may hire law enforcement officers and would make recommendations to the legislature.

The commission will study the feasibility and benefits of establishing a cadet program. The questions or issues to be addressed by the commission in the study are as follows:

- (i) impact on diversity within law enforcement agencies;
- (ii) impact on veteran preference hiring within law enforcement agencies;
- (iii) recommendations to ensure increased diversity across law enforcement agencies;
- (iv) proposed standards for admission to the statewide cadet program, including, but not limited to, age, education and physical, psychological and mental health;
- (v) proposed standards, including form, method and subject matter, for a qualifying examination which shall fairly test the applicant's knowledge, skill and abilities that can be fairly and reliably measured and that are actually required to perform the primary or dominant duties of a law enforcement cadet;
- (vi) proposed standards for completion of the cadet program and enlistment as a uniformed law enforcement officer;
- (vii) recommended cadet compensation and benefits, including, but not limited to, insurance coverage, retirement and pension benefits;
- (viii) the feasibility of providing specialized training required for appointment to a particular agency or by a city or town; and
- (ix) any other information the commission deems relevant.

By December 31, 2021, the commission must submit its findings and recommendations relative to the establishment of a statewide law enforcement cadet program.

2. Retention

Retention is a very important issue in policing today. Departments around the country are experiencing officers leaving at rates not seen before. A lot is invested in hiring and training officers and many departments are looking within their organizations to make sure they are providing support to their officers. In recent years, Brookline has expanded opportunities for officers to try different aspects of policing. Officers can join the Bicycle Unit, Patrol/Warrant Unit, Crisis Intervention Team, Special Response Team or one of the committees that have been developed to provide suggestions to improve the department. The Department also provides wellness programs for officers who have experienced traumatic events in the performance of their duties. This subcommittee has also heard from people about the need to take a look at officer's pay scales to ensure it is competitive with other departments in the area. (Appendix 7)

President of the Brookline Police Union, Michael Keaveney, met with the Personnel Subcommittee and shared that although the last few hiring cycles has brought on a diverse pool of officers, the Town has had difficulty retaining its police work force. That problem cannot be solved by leaving, or remaining in, the civil service system. Mr. Keaveney explained that the pay scale in Brookline lags behind other police departments such as Newton, Boston and the State Police.

There are only three steps for a pay increase for the police officer in a career with the Brookline Police Department. The first step occurs after three years of service. After ten years, the officer receives a longevity pay increase. The final pay increase is after twenty years. In other communities, an officer has more opportunities for pay increases with more steps than the three steps in Brookline according to Ann Braga, Brookline's Human Resource Director. When Brookline has posted an opening for a lateral transfer to obtain an experienced officer from another community, Brookline has not been historically successful. Now, there are two Brookline lateral positions posted without any interest.

Further, the younger generation is not as interested in working voluntary details as they would rather spend their time with family and friends, thus creating an incentive for them to find employment with a police department that pays a higher base salary. Mr. Keaveney echoed Chief O'Leary's comments that police officers are reluctant to seek promotional opportunities because the increase in pay is not sufficiently enticing to justify the added responsibilities that come with promotion. As a result, with the exception of one Asian male who is a sergeant, there are no other high ranking minority officers within the Department. Finally, according to Mr. Keaveney, low morale exacerbates the retention issues as the police force often feels under attack by the Brookline community. Since 2011, Brookline has had 26 officers leave early for better opportunities, including four from the class of 2012.

One particular issue that impacts pay and retention in the Brookline Police Department is that Brookline has not adopted Quinn for pay incentives since the state ended the program in 2010. Brookline does provide a \$10,000 stipend to those officers who take additional college coursework in a list of expanded qualifying classes beyond the original Quinn stipend; however, this must be bargained every year, is not large enough to compete with neighboring communities, is not large enough to provide a strong incentive to commit the time, effort and cost to ongoing coursework, especially for younger officers, and creates a disparity in pay and benefits between newer hires and older officers who are grandfathered in under the Quinn bill. The disparity creates a morale issue along with the perception that Brookline highly values education except when it comes to police officers. (Appendix 8)

Retention is also a concern in the 911 Response Center, which is currently operating at 2/3 “full” staff. When shifts are not scheduled due to a shortage of dispatchers, overtime is mandatory. Fifty employees have left Civilian Dispatch since 2002, most to become firefighters or police officers, not necessarily in Brookline. Dispatch has often been a stepping stone, but now the pay disparity with other communities has caused more than 10% of those leaving to leave for other 911 Centers or no further employment. Difficulty maintaining consistent leadership in the call center also challenges retention and work satisfaction.

With a particular focus on retention, the Policing Reforms Committee worked with the Police Department and the Brookline police union to survey employees of the Police Department about their thoughts and experiences, as well as their suggestions for reforming the Department. The survey ran from February 22-28, 2021. There were 87 respondents to the survey, representing about a 50% response rate. More review and analysis needs to be done at the time of the writing of this report in order to digest all of the rich information, including many thoughtful responses to open-ended questions that suggest many ways to improve the Brookline Police Department. Some highlights are as follows:

- Police employees thought that residents had a lukewarm opinion of them. 45% of respondents reported that residents of the Town viewed them favorably, while 31% thought residents viewed them unfavorably. The remainder of respondents were unsure or thought residents were neutral.
- More troublingly, Department employees generally did not feel that the leadership of the Town viewed them well. Just 10% of employees thought the Town's leadership viewed them favorably or very favorably, while 67% of employees thought the Town's leadership viewed them unfavorably or very unfavorably.
- Morale in the Department is very low. 87% of respondents said morale in the Department was poor, while just 3% said morale was good or excellent. 61% thought levels of compensation were poor, while about 5% thought compensation was good or excellent. 85% of employees have seriously considered leaving the Department and several responses to open-ended questions suggest that many employees are actively looking to leave the Department.

While many results from the survey are concerning, they are not all negative. For example, 97% of respondents agreed or strongly agreed that they worked well with their peers in the Department. Officers and employees also provided many helpful suggestions for improving policing, including alternatives to responding to many quality of life calls, such as leaf blowers, snow removal, turkeys, other animals, Covid concerns, and mask wearing. A summary of the results of the survey will be available to the Select Board and to the Police Commissioners' Advisory Committee for follow-up to this Committee's process as valuable information for ongoing reforms and improvements.

3. Promotions

Through the collective bargaining process, Brookline upgraded its promotions examination for the ranks of Sergeant and Lieutenant. For years, the exam was based on a reading list as well as criminal and case law. It became clear that a change in this type of process had to be made in order to ensure supervisors understood policies and procedures in many critical areas. Through negotiations, these exams now have additional questions on them that are based on these policies and procedures. This has added to the challenges associated with studying for the exam but it provides for a more well-rounded supervisor.

Furthermore, the department has provided training in policies and procedures for any officer who is taking a promotional exam. Prior to this component being added to the exam, there was no cost to the town to participate in the exam process. However, with this upgrade, the department has been charged \$7000.00 each exam cycle by the State's Human Resources Division.

Although the Town is considering the possibility of removing the Police Department from the oversight of the Massachusetts Civil Service Commission, as promotions are now still done through Civil Service, it is important to urge officers to take the promotional exams. Currently promotions are still restricted by looking at only the top three on the list under civil service rules; however, Brookline does not hire solely based on the test score, but includes in its consideration the interview, recommendations, work habits, volunteerism, and use of sick leave. Promoting officers is a factor in increasing retention.

If the decision is made to come out of Civil Service, the Town will need to put in place a number of new procedures, including a process for hiring and promoting police officers. As part of the promotional process the Town will likely consider using an assessment center as one of the components in order to select the most qualified person for promotion within the Police Department. (Appendix 9)

Assessment Centers for promoting personnel in the police field have been used for a number of years. This type of assessment can be administered as just one component of a multi-tiered hiring process or as a stand-alone method in selecting a candidate for promotion. Assessment Centers are used by police agencies to obtain the most

qualified and capable persons for supervisory and management positions within the agency. Assessment Centers are usually staffed by a panel of assessors consisting of current and/or former police supervisors or managers who are tasked with evaluating each candidate's responses to realistic job-related exercises. This process allows for a candidate to be measured based on multiple evaluations of their work. It is designed to provide a series of exercises that allow the assessors to evaluate a candidate's abilities to handle the responsibilities of the next highest position in the police agency. Some of these exercises are:

1. Oral presentations
2. Role-playing
3. Written exercises
4. Group discussions
5. Structured interviews
6. Various in-basket exercises

As with any process there are pros and cons that should be mentioned. Some of the benefits are that an assessment center can provide for a more accurate selection of a candidate because these centers allow for a broad range of methods to be used during the selection process. A center can also facilitate an assessment of the candidates existing qualifications that may be used for agencies to predict future performance. A couple of the drawbacks are that this method can be costly and the Town must keep in mind that it needs to hire experienced, unbiased and professional assessors to evaluate the candidates.

4. Leadership Stability

Leadership stability is essential to recruitment, retention and promotions. The Brookline Police Department is fortunate to have Interim Chief Morgan who has stepped into this role twice for ~ten months each time. The Interim Chief is not intended to be put in place for a long time, but a search for a permanent Chief will take time. The Town finds itself in a unique situation, such that the Interim Chief may be in place for a longer than optimal time at a time when the department needs stable leadership that can provide what the department and the community needs. This Subcommittee recommends that the Select Board explore options to stabilize the Department during this time of change, including creating an Interim Chief position, which allows promotions into higher ranks, and acknowledges that the search process might result in the Department running with an extra higher position during a transition period once a permanent Chief is in place.

B. Officer Training

Brookline trains its officers beyond the basic standards for officers, such as a high school diploma, successful completion of basic training, physical fitness and psychological fitness standards, passing an examination and a background check, certification in first aid and cardiopulmonary resuscitation and demonstrating a good and moral character. Training police officers is much more complex than telling officers to be less biased in their interventions.

Brookline has trained 100% of its officers in CIT over the past decade (Appendix 10) and 100% of its dispatchers in mental health first aid. This extraordinary accomplishment and sign of excellence contributed to the selection of the Brookline Police Department by the Massachusetts Department of Mental Health as one of five Training and Technical Assistance Centers (CIT-TTAC) in the state as a resource for other police departments to become trained in community Crisis Intervention Teams. These intensive forty hour trainings educate each officer in signs and symptoms of mental illnesses; medication and treatment; suicide assessment and prevention; mental health issues in children and among the elderly; alcohol and drug assessments and issues; and de-escalation techniques (Appendix 11 & 12).

Every year the Police Department provides its officers with, at a minimum, 48 hours of in-service training on a variety of topics. A lot of this time is taken up by state mandated training. The time spent training officers is on-going through the fiscal year. This year, the Department will provide trainings in the following topics:

- Firearms qualifications (day and night)
- Defensive tactics/Applied Patrol Procedures
- CPR/First Responder
- Implicit bias training
- Legal updates
- Domestic terrorism
- Responding to pandemics and similar emergencies
- Longevity in law enforcement

All of the above are either mandated by the Massachusetts Police Training Council or are recommended by them. They exceed 48 hours but the cost will be managed within the budget. The Department also enhances these topics. For example, CPR/First Responder is taught by Brookline Officer Tim Yee. His training will exceed the requirements by including tourniquet/scenario bleeding simulations training.

The Department will also provide training this year under the EPIC program (Ethical Policing is Courageous). This is a peer intervention program designed to promote a culture of high quality, ethical policing. EPIC educates, empowers and supports the officers on the street to play a meaningful role in policing one another. Several Brookline Officers will also be trained through the Georgetown University Law Center's ABLE Project (Active Bystandership for Law Enforcement). This additional training was obtained through a grant and will allow them to teach this subject to their peers.

Section 30 of Ch. 253 of the Acts of 2020 inserted an entire new chapter 6E to establish the 9 member Massachusetts Peace Officer Standard and Training Commission ("MPOSTC") to certify and decertify police officers.

The Act empowered the MPOSTC to “act as the primary civil enforcement agency for violations” of the standards contained in chapter 6E; establish, jointly with the municipal police training committee minimum officer and police department certification standards, certify qualified applicants to be a police officer and police department, deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person or police department certified for any cause that the commission deems reasonable; receive complaints from any source and preserve all complaints and reports filed; demand access to and inspect, examine, photocopy and audit all papers, books and records of any police department; conduct adjudicatory proceedings in accordance with chapter 30A as an administrative agency; issue subpoenas and compel the attendance of witnesses; and refer cases for criminal prosecution to the appropriate federal, state or local authorities. This power to make referrals include “patterns of racial profiling or the mishandling of complaints of unprofessional police conduct by a law enforcement agency for investigation and possible prosecution to the attorney general or the appropriate federal, state or local authorities”(Section 3(a)(29)) of Chapter 6E. Section 30 of the Act takes effect on July 1, 2021 with exception of certain portions of sections 14 and 15^[2] of chapter 6E^[3].

Furthermore, The Act prohibits a police department to appoint or employ a police officer who is not certified by the MPOSTC^[4]. The division of police certification, in consultation with the division of police standards, shall create and maintain a database containing records for each certified law enforcement officer^[5], which is also publicly available and searchable

^[1] Section 108 of Ch. 253 of the Acts of 2020.

^[2] Section 14 of chapter 6E sets out the rules for the police officer’s use of force including chokeholds and firearms. Section 15 of chapter 6E sets out the police officer’s obligation to intervene to prevent the unreasonable use of force.

^[3] Sections 122-124 of Ch. 253 of the Acts of 2020.

^[4] Section 4(g) of chapter 6E.

^[5] Section 4(h) of chapter 6E.

C. Officer Health and Wellness

“Hurt people can hurt people.” – Tracey Meares, Yale law professor and 21st c. Policing Commission member

Officer health and wellness is critically important for mindful performance of one’s duties as well as for an officer’s own well-being. Stress and wellness impact decision-making critical to an officer’s daily work. Studies have shown how decision making under stress is more likely to be based on unconscious biases rather than using one’s rational mind (Appendix 13). Additionally, officers are at significantly higher risk of suicide, depression, and substance abuse than the general population, which is not surprising given their extremely high rate of exposure to trauma repeatedly and subsequent 25% incidence of Post-Traumatic Stress Disorder. Officers also have a much higher incidence of physical health problems and have a life expectancy ~20 years shorter than the general population.

It is in the best interest of the whole community to address officer's well-being. Improved interactions between officers and community members, increased retention, decreased absences, decreased early retirements, and decreased disability claims are outcomes well described in multiple sources. For these reasons, both officers and the community are partners in assisting officers to remain healthy. For example, Title VII, Ch 41, Sec 101A mandates no smoking is allowed in police officers(Appendix 14), and Title IV, Ch 32, Sec 94, "the heart bill" recognizes that any hypertension or heart disease that develops after a healthy physical examination on entrance into service, shall be considered a condition caused by their work(Appendix 15).

The Brookline Police Department already exceeds the standards set out in the Act with current programming. Crisis Intervention Team training for 100% of the officers sets a foundation for a culture steeped in de-escalation, support, recognition of social and emotional crises and risk factors, and a standard of all members of the department educated in basic mental health. This shared knowledge base is fertile ground for the development, acceptance and high utilization of programs which support officer health and wellness (Appendix 16).

Brookline is an active participant and leader in the Greater Boston Critical Incident Stress Management Team (CISM) serving 11 police departments (Appendices 17, 18, & 19). For example, Brookline's CISM responded to assist Newton already in 2021 after the tragic death of a man with mental illness wielding a knife who was killed by an officer in the line of duty. Brookline requested assistance from CISM seven times in 2020. Debriefing and defusing with any critical incident is common practice in Brookline and unlike most communities, Brookline includes dispatchers in these debriefings. This has been well-received by dispatchers who are first hand listeners to traumatic events and an example of a straightforward way to retain personnel despite the high stress of their daily jobs. Multiple trainings are offered through the peer support unit, such as suicide prevention, psychological and mental health first aid. Further education is strongly encouraged and supported in the department. In addition, a list of outside counselors is available as a resource for officers. There is no active chaplaincy program, an opportunity for development and collaboration with the Brookline faith community.

Another aspect of peer support is working shoulder to shoulder with a colleague in helping others. As they say in AA, you can't pick up a drink when you have one hand in God's and another helping a friend. Officers have bonded together around visiting veterans in the community, providing a caring community service as well as increasing morale among the officer corps. Another more recent effort has been peer support offered by fellow officers to officers with family members who have been targeted in the community because their parent or spouse is a police officer. The entire Brookline community has an opportunity to provide support to the families of police officers who experience bias in the community because of their work in law enforcement (Appendix 20).

When an officer needs more assistance than the above programs, several levels of intervention are available. The early intervention system is designed to assist a potentially troubled police officer, improve accountability and enhance the quality of policing in Brookline. This system is a progressive program that involves training, counselling and discipline. It is used to identify officers who may be having difficulties in performing police work.

By identifying these officers at an early stage, intervention can take place to correct behavior patterns thereby making it less likely they will re-occur in the future. This system will also identify problem areas, training needs and issues that must be addressed in order to provide professional and effective policing. In these cases, a program will be developed by the supervisor of the officer, subject to the approval of the Division Deputy Superintendent. The supervisor is to explain the program to the officer, outline the necessary steps in detail and the officer and the supervisor are to sign off on the plan, indicating their understanding of it. Reports are to be filed by the supervisor at regular intervals. The program will include, but not be limited to "ride-alongs" with the supervisor, increased one-on-one supervision, increased training and will cover a period of time not less than six months. An assessment will be made at that time as well as a decision on the status of the officer and whether or not to extend the program.

Brookline Police participates in the LEADER program at McLean Hospital, which connects first responders with specialized mental health and substance misuse outpatient and inpatient treatments. Human Resources Institute in Brookline provides a similar program, Honor Strong.

The Police Reform Act mandates officer wellness training and that departments participate in CISM:

1.) SECTION 116K. (a) The municipal police training committee shall develop and establish, within its recruit basic training curriculum and its in-service training curriculum available to in-service trainees, a course for police training schools, academies and programs for the training of law enforcement officers on mental wellness and suicide prevention. The course, which shall consist of 2 hours of total instruction annually, shall teach law enforcement officers how to: (i) utilize healthy coping skills to manage the stress and trauma of policing; (ii) recognize the symptoms of post-traumatic stress disorder within themselves and other officers; and (iii) recognize the signs of suicidal behavior within themselves and other officers.

(b) The course shall include information on the mental health resources available to help law enforcement officers and shall be designed to reduce and eliminate the stigma associated with law enforcement officers receiving mental health services.

(c) The course of instruction shall be developed by the municipal police training committee in consultation with appropriate groups and individuals having an interest and expertise in law enforcement mental health and suicide prevention.

(d) All law enforcement officers shall annually attend and complete a course on mental wellness and suicide prevention.

2.) SECTION 118. Notwithstanding any general or special law to the contrary, the municipal police training committee, in consultation with the executive office of public safety and security, shall promulgate regulations requiring law enforcement agencies to participate in critical incident stress management and peer support programs to address police officer mental wellness and suicide prevention as well as critical incident stress and the effect on public safety. The programs shall be created internally within an agency or agencies may collaborate within a regional system. The programs shall include, but shall not be limited to, mental wellness and stress management pre-incident

and post-incident education, peer support, availability and referral to professional resources and assistance. The municipal police training committee shall ensure that each officer is notified of the program during each 3-year certification cycle under this act.

V. Recommendations

1. That the Police Commissioner Advisory Committee (“PCAC”) proposed by the Accountability Subcommittee be approved by the Select Board to be in operation by July 1 (before the Police Officer Certification provisions of the Police Reform legislation takes effect).
2. That the BPD adopt the Subcommittee’s proposed revision to its Mission Statement as submitted as part of the BPD budget.
3. That the Town Administrator review the Subcommittee’s analysis of the pros and cons of removing the BPD from civil service, discuss those pros and cons with the Select Board, and prepare to make a decision once the Commission on Civil Service completes its study and the implications of the study are considered on or around October 1, 2021.
4. That the Select Board appoint a study committee to prepare a home rule petition to expand the Towns power to give preferences to different categories of potential applicants to the Police and Fire Departments, such as METCO students, such study committee to include police and fire union representatives.
5. That the BPD Incorporate into the Police Manual an oath of office that includes pledging to uphold the Constitution of the United States in addition to the Constitution of the Commonwealth.
6. That the Select Board take steps to increase stability in leadership for the BPD by filling vacancies at the Deputy, Lieutenant and Sergeant levels by laying out a clear timeline and process for interim leadership and a search for a new Chief, including opportunity for public input.
7. That the BPD implement a more robust Police Cadet Program to assist in diversity hiring.
8. That the Select Board study options to increase retention and promotions, including perceived pay disparities between Brookline and neighboring communities and the Quinn stipend disparity for new hires.
9. That the Select Board consider steps to incentivize officers to take Civil Service promotional exams, such as (a) subsidizing some of the costs associated with taking the exams, (b) urging the BPD to support study groups for promotion exam candidates, and (c) urging the BPD to formalize a mentorship program to assist candidates for promotions.

10. That the BPD and Human Resources Department systematically conduct exit interviews with all departing officers, including prior departed officers and Chief Lipson to fully understand barriers to retention.
11. That the BPD develops police specific counseling and chaplaincy programs to provide mental health and substance use treatment services in addition to the Employee Assistance Program.
12. That the BPD include in its meetings public school leadership on bullying and related problems to report and raise the need for school sensitivity on bullying, shaming, and isolating of police officers' children when there are intense discussions and actions related to social and racial justice and other emotionally intense issues involving police.
13. That the BPD maintain accreditation and state certification by MPOSTC and establish and implement record keeping procedures by July 1, 2021 to comply with certification of officers and the Department as delineated in The Act.
14. That the BPD monitor promulgation of new rules and regulations by MPOSTC and take all steps to comply as a department.
15. That the Select Board in their role as Police Commissioners undertake a full and comprehensive review of the Police Manual.
16. That the BPD solicit input from Department personnel to design expanded health and wellness programming, including physical and mental well-being.
17. That the Select Board and the BPD assimilate suggestions for reform and improvement identified by police personnel in the survey February 22-28, 2021.

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